United States Court of Appeals

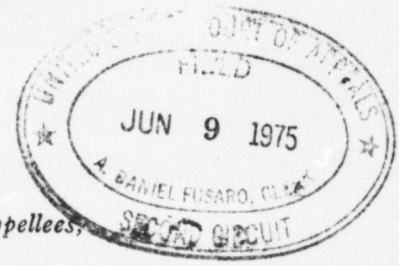
for the Second Circuit

APPENDIX

75-7235
75-7236 75-7234

United States Court of Appeals

For the Second Circuit



Docket No. 75-7234

SAMUEL J. LEFRAK, *et al.*,
Plaintiffs-Appellees,

against

ARABIAN AMERICAN OIL COMPANY, *et al.*,
Defendants-Appellants.

Docket No. 75-7235

ROCHDALE VILLAGE, INC.,
Plaintiff-Appellee,

against

ARABIAN AMERICAN OIL COMPANY, *et al.*,
Defendants-Appellants.

Docket No. 75-7236

NEW YORK CITY HOUSING AUTHORITY,
Plaintiff-Appellee,

against

ARABIAN AMERICAN OIL COMPANY, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court for the Eastern District of New York

Civil Actions 74-C-1700, 75-C-15 and 75-C-135

JOINT APPENDIX

Attorneys of Record
[See Inside Cover]

SULLIVAN & CROMWELL
48 Wall Street
New York, New York 10005
(212) 952-8100
Attorneys for Defendant-Appellant
Exxon Corporation

WHITE & CASE
14 Wall Street
New York, New York 10005
(212) RE 2-1040
Attorneys for Defendant-Appellant
Arabian American Oil Company

KISSAM & HALPIN
120 Broadway
New York, New York 10005
(212) 962-2000
Attorneys for Defendant-Appellant
Gulf Oil Corporation

CHARLES F. KAZLAUSKAS, JR.
135 East 42nd Street
New York, New York 10017
(212) 953-6086

and

KAY, SCHOLER, FIERMAN, HAYS & HANDLER
425 Park Avenue
New York, New York 10022
(212) 759-8400

Attorneys for Defendant-Appellant
Texaco Inc.

DAVID BERGER, P.A.
1622 Locust Street
Philadelphia, Pa. 19103
(215) 732-8000
Attorneys for all Plaintiffs-Appellees

RICHARD S. LEFRAK
97-77 Queens Boulevard
Forest Hills, New York 11375
(212) IL 9-9021
Attorney for Plaintiffs-Appellees
Samuel J. Lefrak, et al. and Rochdale Village, Inc.

EDWARD W. NORTON
250 Broadway
New York, New York 10007
(212) 433-2525
Attorney for Plaintiff-Appellee
New York City Housing Authority

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76 979 DOCKET

TITLE OF CASE

LEFRAK ORGANIZATION, INC.
VS.
ARABIAN-AMERICAN OIL COMPANY,
~~EXXON CORPORATION~~, 1-1375
MOBIL OIL CORPORATION,
SHELL OIL COMPANY,
STANDARD OIL COMPANY OF CALIFORNIA,
TEXACO, INC.

BASIS OF ACTION: VIOLATION OF THE SHERMAN ANTITRUST ACT
SEEKS: AN INJUNCTION

JURY TRIAL CLAIMED

ON COMPLAINT

For Plaintiff: DAVID BERGER
1622 Locust Street
Phila, Pa. 19103
(Tel) 732-8000 &Richard S Lef
97-77 Queens Blvd.
~~Forest Hills, NY 11375~~
For Defendant: STANDARD OIL:
Lord, Day & Lord
25 Broadway
NYC 344 8480
FOR EXXON: Sullivan & Cro
well 48 Wall St. NYC 10005
952-8100
LORD , DAY & LORD
25 Broadway
N.Y.,N.Y. (344-8480)

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
7/2/76	COMPLAINT	$15. 00					
7-3-76	Paid to Treas.		15 -				

ABSTRACT OF COSTS

TO WHOM DUE	AMOUNT

RECEIPTS, REMARKS, ETC.

LEFRAK ORGANIZATION, INC. VS. ARABIAN-AMERICAN OIL CO.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
7/2/74	Complaint filed. Summons issued.	1	JS5
7-19-74	Mobile Oil Corp's request for production of documents filed.	2	
7-19-74	Mobile Oil Corp's notice to take depositions filed.	3	
8-2-74	By PLATT, J - Order to show cause dtd 7-31-74 for an order to stay Mobil Oil's deposition of pltff, etc. ret 8-7-74 at 10 AM filed.	4	
8/5/74	By COSTANTINO,J.- Order dated July 31, 1974 filed that the time for the deft to answer the complaint is extended to Sept.6, 1974.	5	
8-6-74	Affidavit of Sanford M. Litvack in opposition to pltff's motion to stay discovery filed	6	
8/7/74	Pltff's memo of law filed	7	
8/7/74	Before Costantino,J.-Case called-Motion argued-Answers to be filed by 9/16/74-Deposition taken by 9/23/74-Pre-trial conference adj'd w/o date-Submit order		
8/7/74	By Costantino,J.-Order extending deft's (SHELL) time to answer to complaint to 9/6/74 filed	8	
8-8-74	By NEAHER, J. - Order extending time for deft, Arabian American Oil to answer to 8-16-74 filed	9	
8-9-74	Stipulation extending time for deft Texaco to answer to 9-6-74 filed	10	
8-13-74	By COSTANTINO, J. - Order dtd. 8-9-74 that between 8-15-74 & 9-12-74 counsel for parties shall meet & attempt to agree upon schedule for first wave of discovery, pre-trial conference shall be held on 8-13-74 @ 11:30 A.M., all defts shall answer complaint by 9-10-74, pltff shall answer deft, Mobil's request for production by 9-16-74 etc. filed. (p/c to attys)	12	
/3/74	Motion for leave to intervene as a party pltff , ret. undated filed. (Motion ret. undated)	13	
/3/74	Motion of ~~Glenwood Management Corp.~~ for leave to intervene as a party pltff filed. (Motion ret. undated).	14	
/3/74	Motion of Hillside Associates for leave to intervene as a party pltff filed. (Motion ret. undated).	15	
/3/74	Motion of Pickman Brokerage Agency, Inc. for leave to intervene as a party pltff filed. (Motion ret. undated).	16	
/3/74	Motion of Forest Hills South, Inc. for leave to intervene as a party pltff filed (Motion ret. undated).	17	

(Continued)

CIVIL DOCKET JA 3

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
9-16-71	Pltff's objections to deft Mobil Oil Corp.'s request for production of documents filed.			18
9-13-74	Before COSTANTINO, J.--Cases alled. Conference held & contd to 10-1-74.			
9/23/74	Affidavit of Arthur Klein in response to Mobil Oil Corp's Request for Production of Documents filed.			19
9/23/74	By COSTANTINO,J.- Order dated 9/23/74 filed that the defts time to answer the complaint is adjd to Oct. 11, 1974 etc.			20
9-24-74	Pltff's request for production of documentsetc filed			21
9-30-74	Stenographer's transcript dtd 9-13-74 filed.			222
10-2-74	Defts' first set of interrogatories to pltff filed.			23
10-4-74	By COSTANTINO, J. - Order to show cause dtd 10-2-74 for an order requiring pltff to furnish all information sought by defts in discovery requests, etc., ret 10-8-74 at 10:30 A.M., with proof of service filed.			24
10-4-74	Memorandum of law in support of entry of proposed order filed.			25
10-4-74	Defts' joint request for production of documents filed.			26
10/7/74	Pltff's response to defts first set of interrogatories to pltff filed.			27
10/7/74	Pltff's response to defts joint request for production of documents filed.			28
~~10-7-74~~	~~Pltff's response to defts' first set of interrogatories to pltff filed.~~			~~29~~
~~10-7-74~~	~~Pltff's response to defts' joint request for production filed.~~			~~30~~
10-8-74	Notice of motion ret 10-10-74 ro an roder dismissing the complaint, etc. & memorandum of law in support of motion filed.			31/32
10/10/74	Pltff's Memorandum in Opposition to deft's application for entry of their proposed pretrial order No 1 filed			33
10/10/74	Request for Production of Documents of Pltff, Lefrak Organization , Inc to defts filed			34
10/10/74	Interrogatories of pltff Lefrak Organization , Inc to defts filed			35
10/10/74	Pltff's Response to the Order to Show Cause with respect to entryof defts proposed pre trial order No 1 filed			36
10-10-74	Before COSTANTINO, J. - Case called & adj'd to 11-19-74 at 10am.			
10-11-74	Notice of motion ret 11-19-74 for an order to dismiss the complaint, etc. filed.			37

D. C. 110

74C-979 LEFRAK ORGANIZATION vs. ARABIAN-AMERICAN OIL CO., et al

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
10-10-74	Before COSTANTINO, J. - Case called. Hearing on order to show cause argued. All discovery is stayed as indicated. Submit order.			
10-15-74	By COSTANTINO, J. - Order dtd 10-11-74 staying discovery, etc. filed on document #24.			--
10-15-74	Stenographer's transcript dtd 10-10-74 filed.			38
10-16-74	ANSWER of EXXON filed.			39
10/16/74	Answer of deft Mobil Oil Corp. filed			40
10-16-74	Notice of motion and memorandum of law to dismiss complaint ret 11-19-74 at 3 P.M. filed.			41/42
10/22/74	Answer of deft Standard Oil Co. of Calif. filed.			43
10-24-74	Letter datd 10-22-74 from atty for deft filed.			44
10-24-74	Interrogatories of pltff to defts with respect to the issue of standing filed.			45
10/31/74	Affidavit of Arthur Klein in Support of Pltff's Motion to Amend its complaint filed.			46
10-31-74	Notice of motion with annexed memorandum of law for an order to amend complaint ret 11-6-74 at 11 A.M. filed.			47
10-31-74	Affidavit of Arthur Klein in support of motion to amend the complaint filed.			48
11/6/74	Before COSTANTINO,J.- Case called- Motion to amend the complaint argued-Decision reserved			
1/6/74	Affidavit of Robert Mac Crate filed.			49
1/6/74	Deft Exxon Corp's Memorandum in Opposition to Pltff's Motion to amend complaint filed.			50
11/8/74	Supplemental Interrogatories on the issued of standing filed.			51
11/8/74	Pltff's Request for Production of Documents filed.			52
11/8/74	Answer to deft's first set of interrogatories to pltff filed.			53
11-8-74	Stenographer's transcript dtd 11-5-74 filed.			54
~~1/8/74~~	~~Pltff's Request for Production of Documents filed.~~			~~55~~
~~1/8/74~~	~~Supplemental Interrogatories on the issue of standing filed~~			~~56~~
11/11/74	Summons retd addffiled. Executed and Unexecuted as indicated.			57
1/11/74	Notice of Motion, ret. 11/19/74 filed re: to dismiss			58
11/14/74	Deft Exxon Corp's Memorandum in Support of its Motionto dismiss and in opposition to pltff's motion to amend the complaint filed.			59
1/14/74	Affidavit of Robert MacCrate filed.			60

(Continued)

4 C 979 CIVIL DOCKET LEFRAK ORGANIZATION, INC. v. ARABIAN-AMERICAN OIL COMPANY ET AL.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
11/18/74	By COSTANTINO,J. Order dated Nov 18, 1974 filed that the pltff will serve its answering papers by delivery to counsel for the moving defts on Dec 3, 1974			61
11/18/74	By COSTANTINO,J. Order dated 11/18/74 filed that Para "2" of Pre-trial order No 1, entered by this court on Oct 11, 1974 is hereby amended, etc			62
11-19-74	Before COSTANTINO, J.-Case called and defts motion to dismiss pursuant to Rules 8 and 12 of FRCP adjourned to 12-12-74.			
11019-74	Before COSTANTINO, J.-Defts motion for an order pursuant to Rules 12(b)(6) & 8(a) adjourned to 12-12-74.			
11-21-74	Notice of motion ret 12-12-74 to dismiss the complaint as against Standard Oil Co. of Calif. filed.			63
11-22-74	Notice of motion to dismiss complaint as against deft Exxon Corp ret 12-6-74 at 11 A.M. filed.			64
12/3/74	Pltff's Memorandum in opposition to defts motions to dismiss filed.			65
12/9/74	Answers of deft Mobil Oil Corp. to Pltff's Interrogatories with respect to the issue of standing filed.			66
12/9/74	Objections of deft Mobil Oil Corp. to Interrogatories of pltff Lefrak Organization , Inc. to deft's with respect to the issue of standding filed.			67
12-10-74	Affidavit of Robert MacCRATE in support of motion to dismiss complaint filed.			68
12-11-74	Pltff's memorandum in opposition to deft Exxon's motion to dismiss filed.			69
12-12-74	Response of deft Standard Oil to pltff's interrogatories filed.			70
12-12-74	Response of deft Standard Oil to pltff's supplemental interrogatories filed.			71
12-12-74	Response of deft Standard Oil to pltff's request to produce filed.			72
12-12-74	Before COSTANTINO, J.-Case called. Pre-trial held and cont'd to 1-10-75			
12-12-74	Before COSTANTINO, J.-Case called and motion to dismiss adjourned to 1-10-75.			
12-12-74	Before COSTANTINO, J.-Case called and motion to dismiss adjourned to 1-10-75.			
12-12-74	Affidavit in further support of deft Standard Oil's motion to dismiss dtd 11-20-74 etc filed, with reply Memorandum in support of Shell Oil's motion to dismiss filed.			73/74

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
12-13-74	Answers of deft Mobil to supplemental interrogatories filed.			75
12-13-74	Objections of deft Mobil Oil to supplemental interrogatories filed.			76
12-13-74	Responses of deft Mobil Oil to pltff's request for production of documents filed.			77
1/10/75	Before COSTANTINO,J.- Case called- Motions withdrawn to intervene and to amend compaaint and action is dismissed-Conference set down on 2/28/75			
1/13/75	Deft Exxon Corp's Reply Memorandum in Support of its Motion to dismiss and in opposition to pltff's motion to amend the complaint filed.			78
1/13/75	By COSTANTINO,J.- Order dated 1/10/75 filed that the motion to amend the complaint is withdrawn without prejudice, the motions to intervene are deemed withdrawn without prejudice and the complaint in this action is dismissed as to Exxon without prejudice, etc. P.C. mailed to the attys.			79
/16/75	Steongrapher's transcript of 1/10/75 filed.			80
/28/75	Before COSTANTINO,J.- Case called- Adjd to 3/7/75			
/7/75	Before COSTANTINO,J.- Case called- Pre-trial conference adjd without date			
5-8-75	Letter dtd 5-5-75 to Clerk from Robert MacCrate filed.			81
5-12-75	Acknowledged receipt of original papers from C of A filed.			82

DOCKET 1700

JA 7

COSTANTINO, J.

TITLE OF CASE

SAMUEL J. LEFRAK,
AMERICAN APARTMENTS, INC.,
AUBURN LEASING CORP.,
BUCKNELL LEASING CORP.,
BUILDERS LEASING CORP.,
CADILLAC LEASING CORP.,
CAMBRIDGE LEASING CORP.,
EARTH LEASING CORP.,
ELM LEASING CORP.,
FORD LEASING CORP.,
GARDEN LEASING CORP.,
GREENWICH LEASING CORP.,
HARTFORD LEASING CORP.,
IMPERIAL LEASING CORP.,
INTERNATIONAL LEASING CORP.,
KANSAS LEASING CORP.,
LINCOLN LEASING CORP.,
MARTINIQUE LEASING CORP.,
NOTRE DAME LEASING CORP.,
PENNSYLVANIA LEASING CORP.,
QUEENS LEASING CORP.,
RIVIERA LEASING CORP.,
ROAD LEASING CORP.,
TOWN LEASING CORP.,
TULANE LEASING CORP.,
TWIN LEASING CORP.,
LONDON LEASING CORP.,
LA FRANCE LEASING CORP.,
COPENHAGEN LEASING CORP.,
ROME LEASING CORP.,
CANADA LEASING CORP.,
MEXICO LEASING CORP.,
PANAMA LEASING CORP.,
UESS LEASING CORP.,
L. S. S. LEASING COMPANY,
SECTIONS I, II, AND III,
AMHERST LEASING CORP.,
ANNAPOLIS LEASING CORP.,
ARCADIA LEASING CORP.,
ATLANTIS LEASING CORP.,
BEL AIR LEASING CORP.,
BELT PARKWAY CONSTRUCTION CORP.,
BUICK LEASING CORP.,
CITADEL LEASING CORP.,
COLGATE LEASING CORP.,
CORNELL LEASING CORP.,
COUNTRY LEASING CORP.,
[illegible] LEASING CORP.,
BRAZILIA LEASING COMPANY,
PERU LEASING COMPANY,
COLUMBIA LEASING COMPANY,

N ANTI-TRUST ACT
: $75,000,000.00

DISBURSED		DATE	DEFENDANT
		4-10-75	appeal fi
15	-	4-11-75	Post to

RECEIPTS, REMA

ATTORNEYS

For Plaintiff:

David Berger
1622 Locust St.
Phila. Pa, 19103
(215) 732-8000

For Defendant: EXXON: SULLIVAN CROMWELL 48 Wall Street
N.Y.,N.Y. 10005
952-8100

FOR TEXACO: CHARLES F. KAZLAUSKAS, JR.
~~XXX~~ 135 East 42nd Street
N.Y.,N.Y. 10017
953-6086

FOR GULF OIL CORP.:
Kassam & Halpin
120 Broadway
New York, N.Y. 10005
962-2000

FOR MOBIL OIL:
Donovan Leisure Newton Irvine
30 Rockefeller Pl NYC 1
10020 / 489-4100

FOR STANDARD OIL:
LORD, DAY & LORD
25 Broadway
N.Y.,N.Y. 10004
344-8480

For ARABIAN-AMERICAN O
White & Case
14 Wall Street
NY, NY 10005 732-104

80 1700

JA 8

LEFRAK -vs- ARABIAN AMERICAN OIL

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
	w/interrogatories		
12-3-74	Complaint filed. Summons issued.	1	JS5
12/23/74	Deft Asiatic Petroleum Corp's First Interrogatories to Pltff's filed.	2	
12-30-74	By COSTANTINO, J.--order extending time for Gulf Oil to answer complaint to 1-10-75 etc. filed.	3	
1/2/75	Pltff's Request for Production of Documents filed.	4	
1/2/75	Interrogatories of Pltff's Samuel J. Lefrak, et al with respect to the issue of standing filed.	5	
1/2/75	Supplemental Interrogatories on the issue of standing filed.	6	
1-6-75	By COSTANTINO, J. - Order dtd 1-6-75 extending time of deft Standard Oil of California to answer complaint to 1-17-75 filed.	7	
1-6-75	By COSTANTINO, J. - Order dtd 1-6-75 extending time of deft Mobil Oil to answer complaint to 2=3-75 filed.	8	
1-7-75	By COSTANTINO, J.-Order dtd Jan. 7, 1975 extending time for deft Arabian American Oil to answer to Feb. 6, 1975 filed.	9	
1-8-75	Summons returned and filed/ not executed Shell Petroleum Company .	10	
1-8-75	By COSTANTINO, J. - Order dtd 1-7-75 extending time of deft Asiatic Petroleum to answer complaint to 1-26-75 filed.	11	
1/8/75	ANSWER of deft Texaco Inc. filed.	12	
1/8/75	ANSWER of deft Exxon Corp filed.	13	
	~~ZZBZZBZZZAWBWERZ~~		
1-13-75	By COSTANTINO, J.-Pretrial Order No. 1 re interests of avoiding duplicative discovery filed.	14	
1/20/75	By COSTANTINO, J.- Order filed that time deft's to answer or make any motion is extended to 2/26/75	15	
1/21/75	S. Lefrak's request for Production of Documents filed.	16	
1/22/75	Answer of deft Standard Oil Co. of Calif filed.	16	
1-24-75	Supplemental summons issued as to Shell Transport & Trading Co Shell Petroleum Co. Ltd Royal Dutch Petroleum Co., & Shell Petroleum, N.V.		
1-24-75	Supplemental summons filed. Service of supplemental summons complaint, & interrogatories made by certified mail, receipt #s 423980-423983. (See receipts & letter of mailing addresses annexed to summons.)	17	
1-24-75	Notice of appearance for Gulf Oil Corp filed.	18	
2-3-75	Registered receipt ret and filed/Royal Dutch Petroleum.	19	

(continued)

CIVIL DOCKET 74 C 1700 S. LEFRAK, ET AL VS. ARABIAN-AMERICAN OIL CO.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
2/4/75	By COSTANTINO,J.- Order dated 2/4/75 filed that the time for Gulf Oil Corp. to answer the ~~XXXXX~~ interrogatories is extended to 2/7/75			20
2-5-75	ANSWER filed. (Mobil Oil Corp)			21
2-6-75	By COSTIANTINO, J.--Stipulated protected order dtd 2-6-75 filed.			22
2-6-75	By COSTAINTINO, J.--Order dtd 2-5-75 extinding time for Asiatic to answer, etc to interrogatories to 2-10-75 filed.			23
2/7/75	Notice of Motion, ret. 2/20/75 filed re: to dismisss with prejudice			24
2/7/75	Deft Arabian American Oil Co's Memorandum in Support of its Motion to dismiss filed.			25
2/7/75	Affidavit of Service filed (for above motinn and Memo)			26
2/10/75	Answer of Deft Gulf Oil Corp. filed.			27
2/10/75	Response of deft Gulf Oil Corp. to Pltff's S. Lefrak , et al request for production of documents filed.			28
2/10/75	Response of deft Gulf Oil Corporation to Pltff's Request for Production of Documents filed.			29
2/10/75	Response of deft Gulf Oil Corplto Pltff's Supplemental Interrogatories on the issue of standing filed.			30
2/10/75	Response of deft Gulf Oil Corp. to Interrogatories of Pltff's Samuel J. Lefrak, et al with respect to the issue of standing filed.			31
2-10-75	Acknowledgment received from Netherlands for receipt of summons & complaint filed(423982).			32
2/11/75	Pltff's Answers to deft Asiatic Petroleum Corp 's First Set of Interrogatories filed.			33
2/11/75	By COSTANTINO, J - Order dated 2/10/75 filed that all discovery in this action is stayed subject to further order of the court, etc.			34
2-13-75	Objections of deft ArabianAMerican to interrogatories of pltff filed with affadavit of service annexed.			35/36
2-13-75	Answersof deft Arabian American Oil to interrogatories filed with affadavit of service annexed.			37/38
2-13-75	Answers of deft Arabian American Oil Co to supplemental interrogatories filed with affidavit of service annexed.			39/40

Obey

D. C. 110

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
2-14-75	Objections of Asiatic Petroleum to pltff's request for production filed.			41
2-14-75	Objections of Asiatic Petroleum Corp. to interrogatories of pltffs filed.			42
2-14-75	Objections of Asiatic Petroleum Corp. to pltff's supplemental interrogatories filed.			43
2-18-75	Response of Texaco to Lefrak's request to produce filed.			44
2-18-75	Objections of Texaco to request to produce filed.			45
2-18-75	Response of Texaco to supplemental interrogatories filed.			46
2-18-75	Response of Texaco to interrogatories of pltff filed.			47
2/18/75	Pltff's Memorandum in Opposition to Aramco's motion to dismiss filed.			48
2-20-75	Objections of deft Exxon to pltff's supplemental interrogatories filed.			49
2-20-75	Response of deft Exxon to pltff request for documents filed			50
2-20-75	Responses of deft Exxon to pltff's supplemental request for documents filed.			51
2-20-75	Answers and objections of deft Exxon to pltff's interrogatories filed.			52
2-20-75	Before COSTANTINO, J. - Case called for hearing on deft Aramco's motion dismissing with prejudice counts 1 & 2 of the complaint. Motion argued. Decision reserved.			
2-20-75	Reply memorandum of deft Arabian American Oil in support of its motion to dismiss filed.			53
2-21-75	Answers of Asiatic Petroleum to interrogatories filed.			54
2-21-75	Answers of Asiatic Petroleum to pltff's supplemental interrogatories filed.			55
2-21-75	Responses of Asiatic Petroleum to pltff's request for production filed.			56
2-21-75	Responses of Asiatic Petroleum to pltff's request for production filed. (documents)			57
~~2-21-75~~	~~Memorandum in support of motion filed.~~			58
2/24/75	Memorandum in Support of David Berger verified motion to dissolve the temporary restraining order dated 2/21/75 strike Exxon's motion and for additional relief filed.			58
2/24/75	David Berger, P.A.'s verified motion to dissolve the temporary restraining order dated 2/21/75 strike Exxon's motion and for additional relief filed.			59

Continued

CIVIL DOCKET 74C 1700 LEFRAK v. ARABIAN AMERICAN OIL CO.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
2-25-75	ANSWER FILED (Exxon Corporation)			60
2-25-75	Notice of motion for an order to enjoin pltff from stirring up claims against deft Texaco Inc., etc. ret 3-3-75 filed.			61
2/26/75	By COSTANTINO,J.- Order to Show Cause ret. 3/3/75 filed why an order should not be entered enjoining D. Berger,etc.			62
2/26/75	Exxon Corp's Memorandum of Law in Support of its proposed order to show cause filed.			63
2-27-75	Notice of motion ret 3-3-75 for an order enjoining David Berger, P/A from ~~soliciting potential~~ intervening pltffs and disqualifying David Berger and all counsel associated with that firm from prosecuting the actions filed.			64
2/28/75	Affidavit of Robert Mac Crate filed.			65
3-3-75	Notice of Motion ret 3-3-75 for an order enjoining David Berger etc from stirring up claims against deft Aramco filed.			66
3-3-75	Before COSTANTINO, J.-Case called. Motion to enjoin argued and adj'd to 3-7-75 for hearing.			
3-4-75	Acknowledgment received from London, England for receipt of summons & complaint(423983) filed.			67
3-4-75	Stenographer's transcript dtd 2-20-75 filed.			68
3/5/75	Before COSTANTINO,J.- Case called- Hearing ordered and begun- Hearing concluded-Decision reserved.			
3/5/75	Before COSTANTINO,J.- Case called- Motion to enjoin argued- Decision reserved.			
3-6-75	Before COSTANTINO, J. - Case called for hearing on motion to enjoin David Berger. Motion denied. Stay is vacated.			
3-10-75	Stenographer's transcripts dtd March 3 & 5, 1975 filed.			69/70
3-11-75	Defts' request for documents filed.			71
3-11-75	Defts' interrogatories to pltffs filed.			72
3-11-75	Affidavit of Robert M. Osgood in support of Exxon's order to show cause filed.			73
3-11-75	Exxon's reply memorandum in supportof motion to prohibit solicitation filed.			74
3-11-75	By COSTANTINO, J. - Order dtd 3-11-75 re solicitation of claims against defts filed.(p/c mailed to attys).			75
3-13-75	Stenographer's transcript dtd 3-6-75 filed.			76
~~3/18/75~~	~~ANSWERS OF DEFT STANDARD OIL CO. of CALIF. FILED.~~			~~77-78~~
~~3/20/75~~	~~Reply Memorandum of Deft Arabian American Oil Co. in Support of its motion to dismiss the complaint filed.~~			~~79~~

D. C. 110

74C-1700 LEFRAK, et al vs. ARABIAN-AMERICAN OIL CO., et al

P. DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS	
3/20/75	Before COSTANTINO, J.- Case called- Motion to dismiss counts 1 and 2 of the complaint-Motion submitted-Decision reserved.				
3-24-75	By COSTANTINO, J.--Memorandum and order dtd 3-21-75 denying motion of Aramco to dismiss counts I, II, & III of the complaint filed. (p/cmailed to attys.)				80
3/27/75	Pltff's Second Set of Supplemental Interrogatories on the issue of standing filed.				81
3/27/75	Pltff's Supplemental Request for Production of Documents on the issue of pltff's standing to sue filed.				82
4-1-75	ANSWER of Arabian American Oil Company filed.				83
4-2-75	Defts' supplementary interrogatories to pltffs filed.				84
4-2-75	Notice of motion ret April 15, 1975 for an order dismissing Counts I and II of each complaint etc filed.				85
4-9075	Notice of appeal filed. Duplicate mailed to C of A & attys.			jn	86
4-15775	Before COSTANTINO, J. - Case called & adj'd without date.				
4-25-75	Response of Texaco to pltffs' supplemental request to produce filed.				87
4-25-75	Response of Texaco to pltffs' second set of supplemental interrogatories filed.				88
4-28-75	Response of Arabian American to pltffs' supplemental request to produce filed.				89
4-28-75	Responses of Arabian American to pltffs' second set of supplemental interrogatories filed.				90
4-29-75	Response of deft Exxon to pltffs' supplemental request for production of documents filed.				91
4-29-75	Answers and objections of deft Exxon to pltffs' supplemental interrogatories filed.				92
5-02-75	Response of Standard Oil to supplemental interrogatories filed.				93
5-02-75	Response of Standard Oil to supplemental request for production filed.				94
5-3-75	By COSTANTINO, J. - Order dtd 5-2-75 extending time of Gulf Oil to answer second set of supplemental interrogatories, etc to 5-9-75 filed.				95
5-6-75	Affidavits of Irwin Gumley, David Berger, John F. Hamlin, Stanley R. Wolfe, William J. Lippman, and Norman Buchbinder filed.				96/101
5-6-75	Memorandum of David Berger in opposition filed.				102
5-6-75	Unsigned order re motion to prohibit solicitation filed.				103
5-6-75	Unsigned order to show cause and stay re restraining and enjoining David Berger filed.				104

CONTINUED

[illegible] v. ARABIAN AMERICAN OIL CO.

CIVIL DOCKET

DATE	FILINGS--PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
5-6-74	Response of deft Mobil Oil Corp. to pltff's supplemental request for production filed.			105
5-6-75	Objections of deft Mobil Oil to pltff's second set of supplemental interrogatories filed.			106
5-6-75	Answers of deft Mobil Oil to pltff's second set of interrogatories filed.			107
5-7-75	Affidavit of Edward Sulzberger filed.			108
5-8-75	File certified and handed to Mr. Kenneth M. Bialo to be taken to the Court of Appeals.			---
5-12-75	Acknowledged receipt of original papers from C of A. filed.			109
5-22-75	Stenographer's transcript dtd 2-24-75 filed.			110
5-23-75	Objections of Asiatic Petroleum Corp. to interrogatories filed.			111
5-23-75	Response of Asiatic Petroleum to request for production filed.			112

D. C. 110

DIST/OFFICE	DOCKET YR.	NUMBER	MO.	DAY	YEAR	J	APPEAL	S	OTHER	NUMBER	DEMAND		
207/1	75	0015	0103	75	3	410	1	1	9999	0718	P		

PLAINTIFFS

NEW YORK CITY HOUSING AUTHORITY

NEW YORK CITY HOUSING AUTHORITY

DEFENDANTS

NEW YORK CITY HOUSING AUTHORITY,
Plaintiff
v.
ARABIAN-AMERICAN OIL COMPANY,
ASIATIC PETROLEUM CORPORATION,
EXXON CORPORATION,
GULF OIL CORPORATION,
MOBIL OIL CORPORATION,
ROYAL DUTCH PETROLEUM COMPANY,
SHELL PETROLEUM, N.V.,
STANDARD OIL COMPANY OF CALIFORNIA,
TEXACO, INC.,
THE SHELL PETROLEUM COMPANY, LIMITED, and
THE SHELL TRANSPORT AND TRADING COMPANY, LIMITED,
Defendants

15 USC § 1
VIOLATION OF THE SHERMAN ANTI-TRUST AC

74C-1700 relates

ATTORNEYS

FOR PLAINTIFF:
David Berger
Stanley R. Wolfe
1622 Locust Street
Philadelphia, PA 19103

and
Edward W. Norton
General Counsel
New York City Housing Authority
250 Broadway
New York, N.Y. 10007

DEFT TEXACO INC:
Charles F. Kazlauskas Jr.
135 East 42nd Street
N.Y., N.Y. 10017
953-6086

DEFT EXXON:
SULLIVAN & CROMWELL
48 Wall Street
N.Y., N.Y. 10005
952-81000

DEFT GULF OIL CORP:
Kissam & Halpin
120 Broadway
New York, NY 10005
962-2000

FOR ARABIAN AMERICAN OIL:
White & Case
14 Wall St. NYC
732-1040

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
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				JS-6	

75 C 15 NYC HOUSING AUTHORITY vs. ARABIAN-AMERICAN OIL COMPANY, et

DATE	NR.	PROCEEDINGS
01-03-75		Complaint filed. Summons issued. (interrogatories annexed). (1)
1/27/75		Deft Asiatic Petroleum Corp.'s First Interrogatories to Pltff filed. (2)
1/27/75		Answer of deft Texaco Inc. filed. (3)
1/29/75		ANSWER of deft Exxon Corp filed. (4)
1-31-75		Summons returned & filed/Unexecuted as to Standard Oil Co. of Calif (5)
1-31-75		Supplemental summons issued for foreign service by registered mail (See letter attached to supplemental summons.
1-31-75		Supplemental summons filed. Copy of summons & complaint with interrogatories mailed to corporations (see letter attached to summons). Registered receipts attached, #15850-15853. (6)
2-3-75		By COSTANTINO, J.-Stipulation dtd 1-30-75 extending time for Mobil Oil Co to answer to 2-21-75 filed. (7)
2-3-75		By COSTANTINO, J.-Stipulation extending time for deft Arabian American Oil to answer to 2-13-75 filed. (8)
2/4/75		By COSTANTINO,J.- Order dated 1/4/75 filed that the time for the deft Gulf Oil Corporation to answer the complaint is extended to 2/28/75 (9)
2/7/75		Summons retd and filed . Executed. (10&11)
2-11-75		By COSTANTINO, J.-Order dtd 2-10-75 that the time of Asiatic Petroleum Corp., Royal Dutch Petroleum Co. Shell Transport & Trading Co to answer is extended to 2-26-75 filed. (12)
2-13-75		Deft Arabian American Oil's Memorandum in support of motion to dismiss filed, with affidavit of service annexed. (13&14)
2-13-75		Notice of Motion ret 3-13-75 dismissing the action with affidavit of service annexed. (15/1
2-14-75		Second supplemental summons issued.
2-19-75		Return receipt filed(Shell Petroleum Co. Ltd.) (17)
2/25/75		Second Supplemental Summons retd and filed. Executed. (18)
2-25-75		Notice of motion for an order to enjoin pltff from stirring up claims against deft Texaco etc ret 3-3-75 filed in 74C-1700. ---
2/26/75		Answer of Deft Mobil Oil Corp filed. (19)
2/26/75		By COSTANTINO, J.- Order to Show Cause, ret. 3/3/75 filed, why an order should not be entered enjoining D. Berger,etc. (filed in 74 C 1700 as Doc. # 62) --
2/26/75		Exxon Corp's Memorandum of Law in Support of its proposed order to show cause filed (filed in 74 C 1700 as Doc.# 63) --
2-27-75		ANSWER filed. (Gulf Oil) (20)
2-27-75		Notice of motion ret 3-3-75 for an order enjoining David Berger from soliciting potential intervening pltffs and disqualifying David Berger and all counsel associated with that firm from prosecuting the action filed. (See 74C 1700 Docu.#64) --
3-3-75		Notice of motion ret 3-3-75 for an order enjoining David Berger etc from stirring up claims against deft Aramco filed. See 74C 1700 docu. #66. --
3-3-75		Before COSTANTINO, J. - Case called. Motion to enjoin D. Berger from soliciting potential entervening pltffs, etc. argued. Adj'd to 3-7-75 at 10 A.M. for hearing.
3/5/75		Before COSTANTINO,J.- Case called- Deft's motion to enjoin argued Decision reserved.

(continued)

75C15

JA 16

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 75C-15
NEW YORK CITY HOUSING AUTHORITY	ARABIAN-AMERICAN OIL COMPANY et al	PAGE 3 OF ____ PAGES

DATE	NR.	PROCEEDINGS	
3-11-75		Affidavit of Robert M. Osgood in support of Exxon's order to show cause filed in 74C-1700.	--
3-11-75		Exxon's reply memorandum of law in support of motion to prohibit solicitation filed in 74C-1700.	--
3-11-75		By COSTANTINO, J. - Order dtd 3-11-75 re solicitation of claims against defts filed in 74C-1700.	--
3-13-75		Before COSTANTINO, J.-Case called. Motion dismissing counts one and two adj'd to 3-20-75 on consent.	
~~3/18/75~~		~~ANSWER of deft Standard Oil Co. of Calif. filed. in 74 C 1700.~~	--
3/20/75		Reply Memorandum of Deft Arabian American Oil Co. in Support of its Motion to Dismiss the Complaint filed.(in 74 C 1700)	--
3/20/75		Before COSTANTINO,J.- Case called- Motion to dismiss counts 1 and 2 of the complaint submitted-Decision reserved.	
4-2-75		Notice of motion ret April 15, 1975 for an order dismissing Counts I and II of each complaint filed in 74C 1700.	--
4-9-75		Notice of appeal filed. Duplicate mailed to C of A & attys. jn	(21)
4-10-75		By COSTANTINO, J.-Order dtd 4-10-75 denying Aramco's motion to dismiss filed. (p/c mailed to attys)	
4-15-75		Before COSTANTINO, J.- Case called & adj'd without date.	(22
4-21-75		ANSWER filed. (Arabian American Oil)	
5-6-75		Affidavits of Irwin Tepler, David Berger, John F. Harlin, Stanley N. Wolfe, William J. Lingan and Norman Buchbinder filed. See 74C 1700 doc. #'s 96 thru 101.	(23)
5-6-75		Memorandum of David Berger in opposition filed.See 74C 1700	--
5-6-75		Unsigned order re motion to prohibit solicitation filed. See 74C 1700.	--
5-6-75		Unsigned order to show cause and stay re restraining and enjoining David Berger filed. See 74C 1700.	--
5-7-75		ANSWER of Standard Oil Company filed.	--
5-7-75		Reply memorandum of Arabian American Oil Co. filed.	24
5-8-75		Above record certified and handed to Kenneth M. Bialo to be taken to the Court of Appeals.	25
5-22-75		Stenographer's transcript dts 2-24-75 filed. See 74C 1700.	--

JA 17

JUDGE	CASE NUMBER			OTHER	NUMBER	
	75C 135		ARREAL			COSTANDINO

207	1	75	0135	01	29	75	3	410	1			999	0718	P		

PLAINTIFFS

ROCHDALE VILLAGE, INC.

ROCHDALE VILLAGE, INC.

DEFENDANTS

ARABIAN-AMERICAN OIL, et al

ARABIAN-AMERICAN OIL COMPANY,
ASIATIC PETROLEUM CORPORATION,
EXXON CORPORATION,
GULF OIL CORPORATION,
MOBIL OIL CORPORATION,
ROYAL DUTCH PETROLEUM COMPANY,
SHELL PETROLEUM, N.V.
STANDARD OIL COMPANY OF
CALIFORNIA,
TEXACO, INC.
THE SHELL PETROLEUM COMPANY,
LIMITED, and
THE SHELL TRANSPORT AND
TRADING COMPANY, LIMITED,

CAUSE

15 USC 1 Antitrust

Relates: 74C 1700 and 75C 15

ATTORNEYS

David Berger
Richard Lefrak
97-77 Queens Blvd.
Forest Hill, N.Y.

DEFT TEXACO: LAWRENCE JE
135 East 42nd Street
N.Y.,N.Y. 10017
953-6086

FOR GULF OIL CORP.:
Kissam & Halpin
120 Broadway
N.Y.N.Y. 10005
962-2000

FOR ARABIAN AMERICAN OIL:
White & Case
14 Wall St. NYC
732-1040

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				JS-6	

75C 135 ROCHDALE VILLAGE, v. ARABIAN-AMERICAN OIL, et al

DATE	NR.	PROCEEDINGS	
1-29-75		Complaint filed. Summons issued. (Interrogatories annexed).	(1)
2-18-75		Additional summons issued. (as to foreign defts)	--
2-18-75		Additional summons filed. Copies of summons & complaint with interrogatories mailed via registered mail to foreign defts (see letter attached to summons) R#16094-16097. Retrun receipt requested.	(2)
2-18-75		Notice of Motion ret 3-20-75 for an order dismissing Counts I and II of the complaint for failure to state claim upon whichrrelief can be granted filed.	(3)
2-18-75		Affidavit of Service filed.	(4)
2-18-75		Deft Arabian American Oil Co.'s Memorandum in support of its motion to dismiss filed with Affidavit of Service.	(5/6)
2/24/75		Summons retd and filed. Executed.	(7)
2-24-75		Deft Asiatic Petroleum Corp's first set of interrogatories filed	(8)
2/24/75		ANSWER of deft Texaco, Inc. filed.	(9)
2/25/75		Summons retd and filed. Executed.	(10)
2/25/75		Summons retd and filed. Executed.	(11&12
2/25/75		Summons retd and filed. Executed and unexecuted as indicated on the summons., and ANSWER of Exxon filed.	(13)
2-25-75		Notice of motion for an order to enjoin pltff from stirring up claims against Texaco,etc, ret 3-3-75 filed in 74C-1700.	---
2/26/75		By COSTANTINO, J. - Order to Show Cause, ret. 3/3/75 filed, why anorder should not be entered enjoining D. Berger,etc. (filed in 74 C 1700 as Doc. # 62)	--
2/26/75		Exxon Corp's Memorandum of Law in Support of its proposed order to show cause filed (filed in 74 C 1700 as Doc. # 63)	--
2-27-75		ANSWER filed. (Gulf Oil)	14
2-27-75		Notice of motion ret 3-3-75 fro an order enjoining David Berger from soliciting potential intervening pltffs and disqualifying David Berger and all counsel associated with that firm from prosecuting the action filed. (See 74C 1700 Docu. #64)	--
2-3-75		Notice of motion ret 3-3-75 for an order enjoining David Berger etc from stirring up claims against deft Aramco filed. See 74C 1700 Document #66.	--
3-11-75		Affidavit of Robert M. Osgood in support of Exxon's order to show cause filed in 74C-1700.	--
3-11-75		Exxon's reply memorandum in support of motion to prohibit solicitation filed in 74C-1700.	--
3-11-75		By COSTANTINO, J. - Order dtd 3-11-75 re solicitation of claims against defts filed.(p/c mailed to attys).filed in 74C-1700.	--
3/18/75		~~ANSWER OF STANDARD OIL CO. FILED. (in 74 C 1700)~~	--
3-19-75		By COSTANTINO, J. - Order dtd 3-13-75extending time of Mobil to answer complaint to 3-24-75 filed.	15
3/20/75		Reply Memorandum of Defs Arabian American Oil Co. in Support of its motion to Dismiss the Complaint filed.	16
3/20/75		Before COSTANTINO,J.- Case called- Deft's motion to dismiss with prejudice counts 1 and 2 of the complaint submitted-Decision reserved.	
4-2-75		Notice of motion ret April15, 1975 for an order dismissing Counts I and II of each complaint etc. See 74C 1700	--

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 75C-135
ROCHDALE VILLAGE, INC.	ARABIAN-AMERICAN OIL, et al	PAGE 3 OF ____ PAGE

DATE	NR.	PROCEEDINGS	
4-9-75		Notice of appeal filed. Duplicate mailed to C of A & attys. Jn	(17
4-10-75		By COSTANTINO, J.-Order dtd 4-10-75 denying Aramco's motion to dismiss filed. (n/c mailed)	
4-15-75		Before COSTANTINO, J. - Case called & adj'd without date.	(18
4-21-75		Motion filed. (Arabian American)	(1
5-5-75		Affidavits of Irwin Cooley, David Verger, John F. Hamlin, Stanley A. Wolfe, William J. Lipman and Norman Buchbinder filed. See 74C 1700 docs. #'s 96 thru 101.	-
5-[illegible]-75		Memorandum of David Verger in opposition filed. See 74C 1700	--
5-6-75		Proposed order to enjoin to prohibit solicitation filed. See 74C 1700.	
5-6-75		Rule and order to show cause and stay re restraining and prohibiting David Verger filed. See 74C 1700;	-
5-7-75		Issues of Standard Oil Company filed.	-
5-8-75		File certified and handed to Mr. Kenneth M. Bialo to be taken to the Court of Appeals.	20
5-22-75		Stenographer's transcript dtd 2-24-75 filed. See 74C 1700.	--

Motion for Leave to Intervene as Party Plaintiff of Glenwood Management Corporation, Filed September 3, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

O R D E R

AND NOW, to wit this day of , 1974, upon consideration of the Motion of Glenwood Management Corporation to intervene as a party plaintiff in the above-captioned action, it is hereby ORDERED and DECREED that said motion is granted and that the intervenor plaintiff, Glenwood Management Corporation, may serve its complaint on the defendants in said action by service on their counsel of record.

_____

J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

MOTION FOR LEAVE TO INTERVENE
AS A PARTY PLAINTIFF

Intervenor plaintiff, Glenwood Management Corporation (hereinafter "Glenwood"), moves the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for leave to intervene as a party plaintiff in this action and offers the following in support thereof:

1. Glenwood has its principal office location at 1200 Union Turnpike, New Hyde Park, New York, 11040. Glenwood is the builder, owner and lessor of in excess of 5,000 apartment units in the Metropolitan New York and surrounding area. These properties provide housing for approximately 20,000 tenants.

2. During the relevant time period Glenwood has purchased petroleum products, including but not limited to, fuel oils and heating oils as well as electricity and steam heat.

3. As a direct result of defendants' unlawful acts as set forth in the Complaint of the Lefrak Organization, Inc., Glenwood has been damaged by being required to pay a higher price for petroleum products and electricity as identified in paragraph 2 hereof.

4. Glenwood's claims involve questions of law and fact common to those in the pending action.

WHEREFORE, Glenwood requests that it be permitted to intervene as a party plaintiff in said action and to file and serve upon defendants its proposed Complaint, a copy of which is attached hereto as Exhibit "1".

Stanley R Wolfe

David Berger
Stanley R. Wolfe
Steven J. Greenfogel
1622 Locust Street
Philadelphia, PA 19103

and

Richard S. Lefrak
97-77 Queens Boulevard
Forest Hills, NY 11375

OF COUNSEL:
David Berger, P.A.,
Attorneys-At-Law

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

COMPLAINT

1. Intervenor plaintiff, Glenwood Management Corporation (hereinafter "Glenwood"), has its principal office location at 1200 Union Turnpike, New Hyde Park, New York, 11040. Glenwood is the builder, owner and lessor of in excess of 5,000 rental apartment units in the Metropolitan New York and surrounding area. These properties provide housing for approximately 20,000 tenants.

2. During the period of defendants' illegal activities, Glenwood has purchased large quantities of fuel oil for use in supplying heat to buildings owned and operated by it. During this same period, Glenwood also purchased substantial quantities of electrical power and steam heat from Consolidated Edison of New York, Inc. and other utility companies.

3. As a direct result of the illegal actions of defendants, Glenwood has paid more for such products than it would have paid had the defendants not engaged in wholesale violations of §1 of the Act of Congress of July 2, 1890 C.647, 26 Stat. 209, 210 (15 U.S.C. §1) commonly known as the Sherman Act, §74 of the Act of Congress of August 17, 1894, C.349, 28 Stat. 570 (15 U.S.C. §8) commonly known as the Wilson Tariff Act, and New York Laws 1909 C.25 §1, commonly known as the Donelly Act, 22 New York General Business Law, §340. Intervenor plaintiff has thereby been injured in an amount in excess of $10,000.

COUNT I

4. Glenwood incorporates herein by reference paragraph 1 through 3 above and paragraphs 1 and 3 through 17 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of interstate trade and commerce in violation of §1 of the Sherman Act;

B. That defendants be enjoined from continuing the acts and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants for treble the amount of damages suffered by intervenor

plaintiff, together with the cost of suit, including a reasonable attorneys' fee; and

D. That intervenor plaintiff shall have such other and further relief as may appear appropriate.

COUNT II

5. Glenwood incorporates herein by reference paragraph 1 through 3 above and further alleges and incorporates herein by reference paragraphs 3 through 18 and paragraph 20 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of import trade and commerce in violation of §73 of the Wilson Tariff Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants and in favor of intervenor plaintiff for treble damages determined to have been sustained by intervenor plaintiff, together with the cost of suit including a reasonable attorneys' fee; and

D. Such other and further relief as may appear necessary and appropriate.

COUNT III

6. Glenwood incorporates herein by reference paragraph 1 through 3 above and further alleges and incorporates herein by reference paragraphs 3 through 17, paragraph 21, and paragraphs 23 through 26 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10 and modifying paragraph 24 to relate to intervenor plaintiff's 20,000 tenants.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of business, trade and commerce in violation of §1 of the Donnelly Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That intervenor plaintiff be awarded damages determined to have been sustained by intervenor plaintiff;

D. That judgment be awarded for punitive damages against defendants and in favor of intervenor plaintiff; and

E. Such other and further relief as may appear necessary and appropriate.

Stanley R. Wolfe

OF COUNSEL:
David Berger, P.A.
Attorneys-At-Law
1622 Locust Street
Philadelphia, PA
19103

David Berger
Stanley R. Wolfe
Steven J. Greenfogel
1622 Locust Street
Philadelphia, PA 19103

and

Richard S. Lefrak
97-77 Queens Boulevard
Forest Hills, NY 11375

Attorneys for Plaintiff

Dated:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

O R D E R

AND NOW, to wit this day of , 1974, upon consideration of the Motion of Hillside Associates to intervene as a party plaintiff in the above-captioned action, it is hereby ORDERED and DECREED that said motion is granted and that the intervenor plaintiff, Hillside Associates, may serve its complaint on the defendants in said action by service on their counsel of record.

_____

J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

MOTION OF HILLSIDE ASSOCIATES
FOR LEAVE TO INTERVENE AS A
PARTY PLAINTIFF

Intervenor plaintiff, Hillside Associates (hereinafter "Hillside"), moves the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for leave to intervene as a party plaintiff in this action and offers the following in support thereof:

1. Hillside has its principal office location at 205-07 Hillside Avenue, Hollis, New York, 11423. Hillside is the builder, owner and lessor of in excess of 2,000 apartment units in the Metropolitan New York and surrounding area. These properties provide housing for approximately 8,000 tenants.

2. During the relevant time period Hillside has purchased petroleum products, including but not limited to, fuel oils and heating oils as well as electricity.

3. As a direct result of defendants' unlawful acts as set forth in the Complaint of the Lefrak Organization, Inc., Hillside has been damaged by being required to pay a higher price for petroleum products and electricity as identified in paragraph 2 hereof.

4. Hillside's claims involve questions of law and fact common to those in the pending action.

WHEREFORE, Hillside requests that it be permitted to intervene as a party plaintiff in said action and to file and serve upon defendants its proposed Complaint, a copy of which is attached hereto as Exhibit "1".

Stanley R Wolfe

David Berger
Stanley R. Wolfe
Steven J. Greenfogel
1622 Locust Street
Philadelphia, PA 19103

and

Richard S. Lefrak
97-77 Queens Boulevard
Forest Hills, NY 11375

OF COUNSEL:
David Berger, P.A.,
Attorneys-At-Law

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

COMPLAINT

1. Intervenor plaintiff, Hillside Associates (hereinafter "Hillside"), has its principal office location at 205-07 Hillside Avenue, Hollis, New York, 11423. Hillside is the builder, owner and lessor of in excess of 2,000 rental apartment units in the Metropolitan New York and surrounding area. These properties provide housing for approximately 8,000 tenants.

2. During the period of defendants' illegal activities, Hillside has purchased large quantities of fuel oil for use in supplying heat to buildings owned and operated by it. During this same period, Hillside also purchased substantial quantities of electrical power from Consolidated Edison of New York, Inc. and other utility companies.

3. As a direct result of the illegal actions of defendants, Hillside has paid more for such products than it would have paid had the defendants not engaged in wholesale violations of §1 of the Act of Congress of July 2, 1890 C.647, 26 Stat. 209, 210 (15 U.S.C. §1) commonly known as the Sherman Act, §74 of the Act of Congress of August 17, 1894, C.349, 28 Stat. 570 (15 U.S.C. §8) commonly known as the Wilson Tariff Act, and New York Laws 1909 C.25 §1, commonly known as the Donelly Act, 22 New York General Business Law, §340. Intervenor plaintiff has thereby been injured in an amount in excess of $10,000.

COUNT I

4. Hillside incorporates herein by reference paragraph 1 through 3 above and paragraphs 1 and 3 through 17 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of interstate trade and commerce in violation of §1 of the Sherman Act;

B. That defendants be enjoined from continuing the acts and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants for treble the amount of damages suffered by intervenor

plaintiff, together with the cost of suit, including a reasonable attorneys' fee; and

D. That intervenor plaintiff shall have such other and further relief as may appear appropriate.

COUNT II

5. Hillside incorporates herein by reference paragraph 1 through 3 above and further alleges and incorporates herein by reference paragraphs 3 through 18 and paragraph 20 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of import trade and commerce in violation of §73 of the Wilson Tariff Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants and in favor of intervenor plaintiff for treble damages determined to have been sustained by intervenor plaintiff, together with the cost of suit including a reasonable attorneys' fee; and

D. Such other and further relief as may appear necessary and appropriate.

COUNT III

6. Hillside incorporates herein by reference paragraph 1 through 3 above and further alleges and incorporates herein by reference paragraphs 3 through 17, paragraph 21, and paragraphs 23 through 26 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10 and modifying paragraph 24 to relate to intervenor plaintiff's 8,000 tenants.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of business, trade and commerce in violation of §1 of the Donnelly Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That intervenor plaintiff be awarded damages determined to have been sustained by intervenor plaintiff;

D. That judgment be awarded for punitive damages against defendants and in favor of intervenor plaintiff; and

E. Such other and further relief as may appear necessary and appropriate.

OF COUNSEL:
David Berger, P.A.
Attorneys-At-Law
1622 Locust Street
Philadelphia, PA
19103

David Berger
Warren D. Mulloy
Stanley R. Wolfe
Steven J. Greenfogel
1622 Locust Street
Philadelphia, PA 19103

and

Richard S. Lefrak
97-77 Queens Boulevard
Forest Hills, NY 11375

Attorneys for Plaintiff

Dated: August , 1974

Motion for Leave to Intervene as Party Plaintiff of Pickman Brokerage Agency, Filed September 3, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

O R D E R

AND NOW, to wit this day of , 1974, upon consideration of the Motion of Pickman Brokerage Agency, Inc. to intervene as a party plaintiff in the above-captioned action, it is hereby ORDERED and DECREED that said motion is granted and that the intervenor plaintiff, Pickman Brokerage Agency, Inc., may serve its complaint on the defendants in said action by service on their counsel of record.

_____

J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

MOTION OF PICKMAN BROKERAGE AGENCY, INC. FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF

Intervenor plaintiff, Pickman Brokerage Agency, Inc. (hereinafter "Pickman"), moves the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for leave to intervene as a party plaintiff in this action and offers the following in support thereof:

1. Pickman has its principal office location at 205-07 Hillside Avenue, Hollis, New York, 11423. Pickman is the builder, owner and lessor of in excess of 1,150 apartment units in the Metropolitan New York and surrounding area. These properties provide housing for approximately 4,500 tenants.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

COMPLAINT

1. Intervenor plaintiff, Pickman Brokerage Agency, Inc. (hereinafter "Pickman"), has its principal office location at 205-07 Hillside Avenue, Hollis, New York, 11423. Pickman is the builder, owner and lessor of in excess of 1,150 rental apartment units in the Metropolitan New York and surrounding area. These properties provide housing for approximately 4,500 tenants.

2. During the period of defendants' illegal activities, Pickman has purchased large quantities of fuel oil for use in supplying heat to buildings owned and operated by it. During this same period, Pickman also purchased substantial quantities of electrical power from Consolidated Edison of New York, Inc. and other utility companies.

3. As a direct result of the illegal actions of defendants, Pickman has paid more for such products than it would have paid had the defendants not engaged in wholesale violations of §1 of the Act of Congress of July 2, 1890 C.647, 26 Stat. 209, 210 (15 U.S.C. §1) commonly known as the Sherman Act, §74 of the Act of Congress of August 17, 1894, C.349, 28 Stat. 570 (15 U.S.C. §8) commonly known as the Wilson Tariff Act, and New York Laws 1909 C.25 §1, commonly known as the Donelly Act, 22 New York General Business Law, §340. Intervenor plaintiff has thereby been injured in an amount in excess of $10,000.

COUNT I

4. Pickman incorporates herein by reference paragraph 1 through 3 above and paragraphs 1 and 3 through 17 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of interstate trade and commerce in violation of §1 of the Sherman Act;

B. That defendants be enjoined from continuing the acts and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants for treble the amount of damages suffered by intervenor

plaintiff, together with the cost of suit, including a reasonable attorneys' fee; and

D. That intervenor plaintiff shall have such other and further relief as may appear appropriate.

COUNT II

5. Pickman incorporates herein by reference paragraph 1 through 3 above and further alleges and incorporates herein by reference paragraphs 3 through 18 and paragraph 20 of the Complaint of the Iefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of import trade and commerce in violation of §73 of the Wilson Tariff Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants and in favor of intervenor plaintiff for treble damages determined to have been sustained by intervenor plaintiff, together with the cost of suit including a reasonable attorneys' fee; and

D. Such other and further relief as may appear necessary and appropriate.

COUNT III

6. Pickman incorporates herein by reference paragraph 1 through 3 above and further alleges and incorporates herein by reference paragraphs 3 through 17, paragraph 21, and paragraphs 23 through 26 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10 and modifying paragraph 24 to relate to intervenor plaintiff's 4,500 tenants.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of business, trade and commerce in violation of §1 of the Donnelly Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That intervenor plaintiff be awarded damages determined to have been sustained by intervenor plaintiff;

D. That judgment be awarded for punitive damages against defendants and in favor of intervenor plaintiff; and

E. Such other and further relief as may appear necessary and appropriate.

Stanley R. Wolfe

OF COUNSEL:
David Berger, P.A.
Attorneys-At-Law
1622 Locust Street
Philadelphia, PA
19103

David Berger
Warren D. Mulloy
Stanley R. Wolfe
Steven J. Greenfogel
1622 Locust Street
Philadelphia, PA 19103

and

Richard S. Lefrak
97-77 Queens Boulevard
Forest Hills, NY 11375

Attorneys for Plaintiff

Dated: August , 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

O R D E R

AND NOW, to wit this day of , 1974, upon consideration of the Motion of Forest Hills South, Inc. to intervene as a party plaintiff in the above-captioned action, it is hereby ORDERED and DECREED that said motion is granted and that the intervenor plaintiff, Forest Hills South, Inc., may serve its complaint on the defendants in said action by service on their counsel of record.

_____

J.

2. During the relevant time period Pickman has purchased petroleum products, including but not limited to, fuel oils and heating oils as well as electricity.

3. As a direct result of defendants' unlawful acts as set forth in the Complaint of the Lefrak Organization, Inc., Pickman has been damaged by being required to pay a higher price for petroleum products and electricity as identified in paragraph 2 hereof.

4. Pickman's claims involve questions of law and fact common to those in the pending action.

WHEREFORE, Pickman requests that it be permitted to intervene as a party plaintiff in said action and to file and serve upon defendants its proposed Complaint, a copy of which is attached hereto as Exhibit "A".

Stanley R Wolfe

David Berger
Stanley R. Wolfe
Steven J. Greenfogel
1622 Locust Street
Philadelphia, PA 1910

and

Richard S. Lefrak
97-77 Queens Boulevard
Forest Hills, NY 11375

OF COUNSEL:
David Berger, P.A.,
Attorneys-At-Law

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

MOTION OF FOREST HILLS SOUTH, INC.
FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF

Intervenor plaintiff, Forest Hills South, Inc. (hereinafter "Forest Hills"), moves the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for leave to intervene as a party plaintiff in this action and offers the following in support thereof:

1. Forest Hills has its principal office location at 205-07 Hillside Avenue, Hollis, New York, 11423. Forest Hills is the builder, owner and lessor of in excess of 600 apartment units in the Metropolitan New York and surrounding area. These properties provide housing for approximately 2,500 tenants.

2. During the relevant time period Forest Hills has purchased petroleum products, including but not limited to, fuel oils and heating oils as well as electricity.

3. As a direct result of defendants' unlawful acts as set forth in the Complaint of the Lefrak Organization, Inc., Forest Hills has been damaged by being required to pay a higher price for petroleum products and electricity as identified in paragraph 2 hereof.

4. Forest Hills' claims involve questions of law and fact common to those in the pending action.

WHEREFORE, Forest Hills requests that it be permitted to intervene as a party plaintiff in said action and to file and serve upon defendants its proposed Complaint, a copy of which is attached hereto as Exhibit "1".

Stanley R. Wolfe

David Berger
Stanley R. Wolfe
Steven J. Greenfogel
1622 Locust Street
Philadelphia, PA 19103

and

Richard S. Lefrak
97-77 Queens Boulevard
Forest Hills, NY 11375

OF COUNSEL:
David Berger, P.A.,
Attorneys-At-Law

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

LEFRAK ORGANIZATION, INC.,	:	CIVIL ACTION NO.
Plaintiff	:	74C-979
v.	:	
ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC.,	:	
Defendants	:	JURY TRIAL DEMANDED

COMPLAINT

1. Intervenor plaintiff, Forest Hills South, Inc. (hereinafter "Forest Hills"), has its principal office location at 205-07 Hillside Avenue, Hollis, New York, 11423. Forest Hills is the builder, owner and lessor of in excess of 600 rental apartment units in the Metropolitan New York and surrounding area. These properties provide housing for approximately 2,500 tenants.

2. During the period of defendants' illegal activities, Forest Hills has purchased large quantities of fuel oil for use in supplying heat to buildings owned and operated by it. During this same period, Forest Hills also purchased substantial quantities of electrical power from Consolidated Edison of New York, Inc. and other utility companies.

3. As a direct result of the illegal actions of defendants, Forest Hills has paid more for such products than it would have paid had the defendants not engaged in wholesale violations of §1 of the Act of Congress of July 2, 1890 C.647, 26 Stat. 209, 210 (15 U.S.C. §1) commonly known as the Sherman Act, §74 of the Act of Congress of August 17, 1894, C.349, 28 Stat. 570 (15 U.S.C. §8) commonly known as the Wilson Tariff Act, and New York Laws 1909 C.25 §1, commonly known as the Donelly Act, 22 New York General Business Law, §340. Intervenor plaintiff has thereby been injured in an amount in excess of $10,000.

COUNT I

4. Forest Hills incorporates herein by reference paragraph 1 through 3 above and paragraphs 1 and 3 t rough 17 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of interstate trade and commerce in violation of §1 of the Sherman Act;

B. That defendants be enjoined from continuing the acts and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants for treble the amount of damages suffered by intervenor

plaintiff, together with the cost of suit, including a reasonable attorneys' fee; and

D. That intervenor plaintiff shall have such other and further relief as may appear appropriate.

COUNT II

5. Forest Hills incorporates herein by reference paragraph 1 through 3 above and further alleges and incorporates herein by reference paragraphs 3 through 18 and paragraph 20 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of import trade and commerce in violation of §73 of the Wilson Tariff Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants and in favor of intervenor plaintiff for treble damages determined to have been sustained by intervenor plaintiff, together with the cost of suit including a reasonable attorneys' fee; and

D. Such other and further relief as may appear necessary and appropriate.

COUNT III

6. Forest Hills incorporates herein by reference paragraph 1 through 3 above and further alleges and incorporates herein by reference paragraphs 3 through 17, paragraph 21, and paragraphs 23 through 26 of the Complaint of the Lefrak Organization, Inc., Civil Action No. 74C-979, excluding paragraphs 8 and 10 and modifying paragraph 24 to relate to intervenor plaintiff's 2,500 tenants.

WHEREFORE, intervenor plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of business, trade and commerce in violation of §1 of the Donnelly Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That intervenor plaintiff be awarded damages determined to have been sustained by intervenor plaintiff;

D. That judgment be awarded for punitive damages against defendants and in favor of intervenor plaintiff; and

E. Such other and further relief as may appear necessary and appropriate.

Stanley R Wolfe

OF COUNSEL:
David Berger, P.A.
Attorneys-At-Law
1622 Locust Street
Philadelphia, PA
19103

David Berger
Warren D. Mulloy
Stanley R. Wolfe
Steven J. Greenfogel
1622 Locust Street
Philadelphia, PA 19103

and

Richard S. Lefrak
97-77 Queens Boulevard
Forest Hills, NY 11375

Attorneys for Plaintiff

Dated: August , 1974

Transcript of Record of Proceedings of October 10, 1974
Before Costantino, J., Pages 7 to 8

UNITED STATES DISTRICT COURT

JA 51

EASTERN DISTRICT OF NEW YORK

----------x

LEFRAK ORGANIZATION,

Plaintiff,

74-C-979

-against-

ARABIAN-AMERICAN OIL COMPANY, et al.,

Defendants.

----------x

United States Courthouse
Brooklyn, New York

October 10, 1974
3:00 o'clock p.m.

B e f o r e:

HONORABLE MARK A. COSTANTINO, U.S.D.J.

MICHAEL J. MIELE
OFFICIAL COURT REPORTER

Appearances:

DANIEL BERGER, ESQ.,
-and-
STANLEY R. BOLPE, ESQ.,
Attorneys for Plaintiff

MESSRS. WHITE & CASE
Attorneys for Arabian-American Oil Company

BY: FREDRIC S. NEUMAN, ESQ.,
Of Counsel

MESSRS. DONOVAN, LEISURE, NEWTON & IRVINE
Attorney for Mobil Oil Company

BY: SANFORD A. LITVACK, ESQ.,
-and-
KENNETH E. NEUMAN, ESQ.,
Of Counsel

CHARLES F. BAZLAUSKAS, JR., ESQ.,
Attorney for Texaco Oil Company

MESSRS. SULLIVAN & CROMWELL
Attorneys for Exxon Oil Company

BY: ROBERT OSGOOD, ESQ.,
-and-
KEN GIALL, ESQ.,
Of Counsel

MESSRS. WICKER, RIDDELL, BLOOMER, JACOBI & McGUIRE
Attorneys for Shell Oil Company

BY: HAROLD F. McGUIRE, ESQ.,
-and-
JAMES W. HARBISON, ESQ.,
Of Counsel

(continued next page)

Appearances: (Cont.)

MESSRS. LORD, DAY & LORD
Attorneys for Standard Oil of California

BY: GORDON SPIVACK, ESQ.,
HARRY SKLARSKY, ESQ., and
DAVID PARKS, ESQ.,
Of Counsel

MESSRS. KAYE, SCHOLLER, FIERMAN, HAYS & HANDLER
425 Park Avenue
New York, New York

BY: MILTON J. SHUBIN, ESQ.,
Of Counsel

* * * JA 54

There are cases in this district -- there are no Third Circuit cases that we were able to find -- there are cases in this district on this point. Not in our memorandum, however, we have made copies of the leading case in Connecticut in the Master Key case, which I think will set forth, probably better than we did in our memorandum, the rationale for why consumer purchasers of products have standing to sue under anti-trust laws even though they are not the first purchaser.

With the Court's permission, I will add this to the list of documents and I have copies of the opinion for all parties here. It seems to me that this cases is on all fours with our case and should be dispositive of the standing issue.

If our likelihood of success on standing is clear as we think it is, then I don't think there is any argument with respect to even the request for a stay and even so, there should be no stay because a stay of discovery will work to our prejudice.

Along this line I would like to make one other comment. As you know, there are a number of petitions to intervene which are outstanding before the Court. I have been informed and I can now represent that the Helmsley-Spear interests in New York will be inter-

vening in this litigation. He is one of the largest real estate owners in the city.

I have also been informed through their counsel that the client has informed him that in fact the Hemsley-Spear people have made direct purchases from one of the defendants. So that a stay of discovery at this time is really moot as a question because we are going to have, as I believe another plaintiff in this case who has made a direct purchase from one of th defendant conspirators and I know of no case even mentioned by the defendants which would in any way exclude that entity from the right to bring an anti-trust case. That being the case I see no reason for a general stay.

We are able to manage the litigation as to the standing issue simultaneously with the general litigation and I believe it would work to the grave detriment of our client. The longer we wait the weaker people's memories are, documents are lost, and I frankly see no need for any kind of a general stay.

We intend to move forward on both issues and I think everybody will agree that everybody has made that attempt so far. That's our position.

MR. LITVACK: Your Honor, I represent Mobil Oil Company but the defendants have, at least in the first

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Order of Costantino, J., Dated January 10, 1975 Dismissing the Complaint Without Prejudice and Deeming the Motions to Amend and to Intervene Withdrawn Without Prejudice

UNITED STATES DISTRICT COURT

JA 56.

EASTERN DISTRICT OF NEW YORK

- x

LEFRAK ORGANIZATION, INC., :

Plaintiff, :

-against- : Civil Action No. 74-C-979 (M.A.C.)

ARABIAN AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION, SHELL OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA and TEXACO, INC., : ORDER

Defendants. :

- x

Upon the motion to dismiss made by defendant Exxon Corporation on November 6, 1974, upon the motion to amend the complaint made by plaintiff dated October 29, 1974, upon the motions to intervene served on or about July 31, 1974 and August 29, 1974, and upon all other proceedings in this action had heretofore,

IT IS ORDERED that

1. The motion to amend the complaint is hereby deemed withdrawn without prejudice.

2. The motions to intervene are hereby deemed withdrawn without prejudice.

3. The complaint in this action is hereby dismissed without prejudice.

U.S.D.J.

December 10, 1974

JA 57

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

LEVITAN ORGANIZATION, INC.,

Plaintiff,

against

ARABIAN-AMERICAN OIL COMPANY, EXXON CORPORATION, MOBIL OIL CORPORATION, AMERICAN OIL COMPANY, STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC., GULF OIL COMPANY, and ATLANTIC OIL COMPANY,

Defendants.

74 C 979

----------x

United States Courthouse
Brooklyn, New York

January 10, 1975
11:00 o'clock a.m.

B e f o r e:

HONORABLE JOHN A. COSTANTINO

U. S. D. J.

LEONY R. GRADISO
Official Court Reporter

Appearances:

STANLEY R. WOLPE, Esq.
Attorney for Plaintiffs

Messrs. WHITE & CASE
Attorneys for Arabian American Oil Co.

By: FREDRIC S. NEWMAN, Esq., of counsel

Messrs. LORD, DAY & LORD
Attorneys for Standard Oil

By: HARRY G. SKLAMBILY, Esq.
and
THOMAS D. BRISLIN, Esq., of counsel

Messrs. SULLIVAN & CROMWELL
Attorneys for Mexon Corporation

By: ROBERT MacCRATE, Esq.
ROBERT H. OSGOOD, Esq.
KENNETH H. BIALO, Esq., of counsel

Messrs. DONOVAN, LEISURE NEWTON & IRVINE
Attorneys for Mobile Oil

By: SANFORD LITVACK, Esq.
JAMES McLAE, Esq., of counsel

Messrs. NICHOLS, RIDDELL, BLOOMER, JACOBI & McGUIRE
Attorneys for Shell Oil Company

By: HAROLD F. McGUIRE, Esq.
and
JAMES W. HARRISON, JR., Esq., of counsel

Appearances (Continued):

Messrs. CRAVATH SWAINE & MOORE
Attorneys for Asiatic Petroleum

By: RALPH L. McAFEE, Esq.
and
JOHN R. HUFFER, Esq., of counsel

ARTHUR VanCELI, Esq.
Attorney for Gulf Oil Company

* * *

MR. WOLFE: The last one is no disagreement. However, there is one further issue.

THE COURT: What is that?

MR. WOLFE: In the first Lefrak action we had outstanding approximately six or seven motions to intervene. We are going to have to have a substantial number of additional plaintiffs, some of whom fall into the same commercial relationship as Lefrak, others who may be cooperatives and the like.

You deferred consideration of the motion to intervene previously. We can do it by everyone filing a separate lawsuit, but I do not think that is contemplated by the rules. I would like to know if the Court would express its opinion as to whether you would entertain motions to intervene.

We have to stop the statute of limitations from running.

MR. MORGAN: That is the most outrageous thing he has said all day. He cannot ask your Honor to entertain motions that haven't even been placed before the Court.

MR. WOLFE: Not specific motions. It is a question of whether we are going to file separate lawsuits or avoid a lot of unnecessary paper work

and file interventions where they belong.

MR. LITVACK: Mr. Wolfe has created his own problem. We have been talking about the standing of these plaintiffs. He now tells us he will try to bring in a whole new set of plaintiffs and we will have to deal with their standing.

MR. WOLFE: You will have to deal with that eventually.

MR. LITVACK: That may be in another context.

MR. WOLFE: We will be filing the lawsuits that we will have to --

THE COURT: You will have to do it that way.

MR. WOLFE: Fine.

MR. MAC CRATE: We still have the question of the dismissal.

THE COURT: That will be dismissed without prejudice.

MR. LITVACK: There has been an order presented to your Honor.

THE COURT: That will be dismissed without prejudice.

MR. WOLFE: As to the February 3rd one, may we make it the 10th?

THE COURT: Very well.

The orders are now signed with their corrections as of today, and you may correspond yours to mine.

Thank you, gentlemen.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK,	CIVIL ACTION NO.
AMERICAN APARTMENTS, INC.,	
AUBURN LEASING CORP.,	
BUCKNELL LEASING CORP.,	
BUILDERS LEASING CORP.,	
CADILLAC LEASING CORP.,	
CAMBRIDGE LEASING CORP.,	
EARTH LEASING CORP.,	
ELM LEASING CORP.,	
FORD LEASING CORP.,	
GARDEN LEASING CORP.,	
GREENWICH LEASING CORP.,	
HARTFORD LEASING CORP.,	
IMPERIAL LEASING CORP.,	
INTERNATIONAL LEASING CORP.,	
KANSAS LEASING CORP.,	
LINCOLN LEASING CORP.,	
MARTINIQUE LEASING CORP.,	
NOTRE DAME LEASING CORP.,	
PENNSYLVANIA LEASING CORP.,	
QUEENS LEASING CORP.,	
RIVIERA LEASING CORP.,	
ROAD LEASING CORP.,	
TOWN LEASING CORP.,	
TULANE LEASING CORP.,	
TWIN LEASING CORP.,	
LONDON LEASING CORP.,	
LA FRANCE LEASING CORP.,	
COPENHAGEN LEASING CORP.,	
ROME LEASING CORP.,	
CANADA LEASING CORP.,	
MEXICO LEASING CORP.,	
PANAMA LEASING CORP.,	
UESS LEASING CORP.,	
L. S. S. LEASING COMPANY, SECTIONS I, II, AND III,	
AMHERST LEASING CORP.,	
ANNAPOLIS LEASING CORP.,	
ARCADIA LEASING CORP.,	
ATLANTIS LEASING CORP.,	
BEL AIR LEASING CORP.,	
BELT PARKWAY CONSTRUCTION CORP.,	
BUICK LEASING CORP.,	
CITADEL LEASING CORP.,	
COLGATE LEASING CORP.,	
CORNELL LEASING CORP.,	
COUNTRY LEASING CORP.,	

DARTMOUTH LEASING CORP.,
DISTRICT LEASING CORP.,
DODGE LEASING CORP.,
DOVER LEASING CORP.,
RAKFEL REALTY CORP.,
STANFORD LEASING CORP.,
SYRACUSE LEASING CORP.,
VIRGINIA GARDENS, INC.,
WEST POINT LEASING CORP.,
WESTPORT LEASING CORP.,
WETHEROLE HOLDING CORP.,
YAILLE LEASING CORP.,
CAROLINA GARDENS, INC.,
OLMSTEAD HOUSING CO., INC.,
CARNEGIE EAST, INC.,
WEST SIDE MANOR, INC.,
MONTICELLO LEASING CORP.,
QUINCY LEASING CORP.,
MT. VERNON SHOPPING CENTER, INC.,
GEORGETOWN LEASING CORP.,
HAMPTON LEASING CORP.,
HARVARD LEASING CORP.,
HOLLYWOOD LEASING CORP.,
KINGS HIGHWAY PROPERTY CORP.,
LIFE MANAGEMENT CO.,
MINNESOTA LEASING CORP.,
MONTAUK LEASING CORP.,
NAUTILUS LEASING CORP.,
NORTHWESTERN LEASING CORP.,
OXFORD LEASING CORP.,
PLYMOUTH LEASING CORP.,
PONTIAC LEASING CORP.,
PORTLAND LEASING CORP.,
PROSPECT PARK HOUSING CO., INC.,
PURDUE LEASING CORP.,
RAPID REHABILITATION CORP.,
LEFRAK CONSTRUCTION CORP.,
SKYHIGH CONSTRUCTION CORP.,
PROSPARK CONSTRUCTION CORP.,
LEFRAK JERSEY CONSTRUCTION,
CALIFORNIA LEASING CO.,
EASTPORT LEASING COMPANY,
MARYLAND LEASING COMPANY,
NEW YORKER LEASING COMPANY,
OAK LEASING CO.,
PARC PLAZA ASSOCIATES,
TENNESSEE LEASING COMPANY,
ARGENTINE LEASING COMPANY,
BRAZILIA LEASING COMPANY,
PERU LEASING COMPANY,
COLUMBIA LEASING COMPANY,

SYDNEY LEASING COMPANY, BRISBANE LEASING COMPANY, MELBOURNE LEASING COMPANY, WELLINGTON LEASING COMPANY, CEYLON LEASING COMPANY, SINGAPORE LEASING COMPANY, SHALIMAR LEASING COMPANY, MANDALAY LEASING COMPANY, EXPRESSWAY SHOPPING COMPANY, HARDING-SHOPPING COMPANY, LEFRAK THEATRE COMPANY, RIDGE LEASING COMPANY, LEFRAK SBN ASSOCIATES, WESTCHESTER PLAZA HOUSING COMPANY, HEMPSTEAD PLAZA HOUSING COMPANY, NATIONAL REALTY COMPANY, HARRISON AND ASSOCIATES, SAMUEL J. LEFRAK AND ETHEL LEFRAK, TRUSTEES UNDER A TRUST OF HARRY LEFRAK, SETTLOR, DATED OCTOBER 1, 1955, FOR THE BENEFIT OF RICHARD LEFRAK, FRANCINE LEFRAK, DENISE LEFRAK BANDIER, PLAINTIFFS vs. ARABIAN-AMERICAN OIL COMPANY, ASIATIC PETROLEUM CORPORATION, EXXON CORPORATION, GULF OIL CORPORATION, MOBIL OIL CORPORATION, ROYAL DUTCH PETROLEUM COMPANY, SHELL PETROLEUM, N.V. STANDARD OIL COMPANY OF CALIFORNIA, TEXACO, INC., THE SHELL PETROLEUM COMPANY, LIMITED, and THE SHELL TRANSPORT AND TRADING COMPANY, LIMITED, DEFENDANTS	JURY TRIAL DEMANDED

COMPLAINT

COUNT I

1. This Count arises under §§4 and 16 of the Act of Congress, October 15, 1914c. 323, 38 Stat. 731 (15 U.S.C. §§15 and 26), for injunctive relief and to recover treble damages and cost of suit including a reasonable attorneys fee against defendants for the injuries sustained by plaintiffs by reason of defendants' violation of §1 of the Act of Congress of July 2, 1890, C. 647, 26 Stat. 209, 210 (15 U.S.C. §1), commonly known as the Sherman Antitrust Act, (hereinafter, "Sherman Act").

2. Plaintiff, Samuel J. Lefrak, sues individually as a sole proprietor, doing business under the names of the following real estate enterprises, all of which have their principal place of business at 97-77 Queens Boulevard, Forest Hills, New York.

ole Proprietorship	Name of Building	Locati
irch Leasing Co.	The Birch	102-45 Rd., Hills*
oulevard Leasing Company	Lefrak Center	97-77 Boulev Rego P
ederal Leasing Company	Lefrak Center	97-77 Boulev Rego P

*Unless otherwise indicated, all properties identified in paragraphs 2, 3, 4 and 5 are located in Queens, New York.

Sole Proprietorship	Name of Building	Location
Grand Leasing Co.	The Alabama	85-14 Broadway, Elmhurst
Indiana Leasing Company	The Indiana	67-25 Dartmouth Street, Forest Hills
Kentucky Leasing Company	The Kentucky	71-11 Yellowstone Blvd., Forest Hills
Life Leasing Company		43-23 42nd St., Sunnyside
		43-24 43rd St., Sunnyside
Maple Leasing Co.	The Maple	102-40 Horace Harding Exp., Forest Hills
Marseilles Leasing Company	The Marseilles	98-05 67th Avenue, Forest Hills
Massachusetts Leasing Company	The Massachusetts	72-10 41st Ave., Jackson Heights
Missouri Leasing Company	The Missouri	64-84 Wetherole St., Forest Hills
Monte Carlo Leasing Company	The Monte Carlo	631 B. 9th St., Far Rockaway
Nebraska Leasing Company	The Nebraska	67-30 Dartmouth St., Forest Hills
Ocean Leasing Co.	The Daytona	22-11 New Haven Ave., Far Rockaway

Sole Proprietorship	Name of Building	Location
Surf Leasing Co.	The Nassau	407 B. 20th St., Far Rockaway
Utah Leasing Company	The Utah	67-15 Dartmouth St., Forest Hills
Wyoming Leasing Company	The Wyoming	84-20 Austin Street, Kew Gardens
Dakota Leasing Company	The Dakota	2425 Nostrand Avenue, Bklyn.
Danbury Leasing Company	The Danbury	388 Avenue X, Brooklyn
Regent Leasing Company	Clarkson Terrace	1305 Clarkson Avenue, Brooklyn
Wisconsin Leasing Company	The Wisconsin	1201 Ocean Parkway, Bklyn.
Lenox Leasing Co.	The Lenox	111 North Third Ave., Mt. Vernon, West Chester
Iowa Leasing Company	The Iowa	2401 Nostrand Avenue, Bklyn.
Newport Leasing Company	The Newport	444 Avenue X, Brooklyn
North Carolina Leasing Company	The North Carolina	2501 Nostrand Avenue, Bklyn.

3. Each plaintiff corporation, identified herein, is incorporated under the laws of the State of New York with its principal place of business at 97-77 Queens Boulevard, Forest Hills, New York. The plaintiff corporations, the real estate owned and locations of such real estate,

where applicable, for each plaintiff corporation are as follows:

Name of Corporation	Building name, type of building, or type of corporation	Location
(a) American Apartments, Inc.	The Washington	63-60 98th St., Forest Hills
(b) Auburn Leasing Corp.	The Auburn	137-20 45th Avenue, Flushing
(c) Bucknell Leasing Corp.	The Bucknell	44-35 Colden Street, Flushing
(d) Builders Leasing Corp.	Stores & Office	97-29 64th Road, Rego Park
(e) Cadillac Leasing Corp.	The Park Vendome	123-60 83rd Avenue, Kew Gardens
(f) Cambridge Leasing Corp.	The Cambridge	48-50 37th Street, Sunnyside
(g) Earth Leasing Corp.	The Willow	63-10 108th St., Forest Hills
(h) Elm Leasing Corp.	The Elm	102-50 62nd Road, Forest Hills
(i) Ford Leasing Corp.	The Ardsley	48-30 40th Street, Sunnyside
(j) Garden Leasing Corp.	The Magnolia	62-60 108th St., Forest Hills
(k) Greenwich Leasing Corp.	The Greenwich	48-50 38th Street, Sunnyside

Name of Corporation	Building name, type of building, or type of corporation	Location
(l) Hartford Leasing Corp.	Stores	34-20 Junction Blvd., Jackson Heights
(m) Imperial Leasing Corp.	The Park Imperial	123-30 83rd Ave., Kew Gardens
(n) International Leasing Corp.	The Texas	83-40 Austin Street, Kew Gardens
(o) Kansas Leasing Corp.	The Kansas	134-20 87th Ave., Kew Gardens
(p) Lincoln Leasing Corp.	The Park Chateau	123-40 83rd Ave., Kew Gardens
(q) Martinique Leasing Corp.	The Martinique	22-04 Collier Ave., Far Rockaway
(r) Notre Dame Leasing Corp.	The Notre Dame	44-15 Colden St., Flushing
(s) Pennsylvania Leasing Corp.	The Pennsylvania	31-35 Crescent St., Astoria
(t) Queens Leasing Corp.	The Brussels	98-01 67th Ave., Forest Hills
(u) Riviera Leasing Corp.	The Riviera	707 B. 9th St., Far Rockaway
(v) Road Leasing Corp.	The Sycamore	63-09 108th St., Forest Hills
(w) Town Leasing Corp.	The Raleigh	42-42 80th Street, Elmhurst

Name of Corporation	Building name, type of building, or type of corporation	Location
(x) Tulane Leasing Corp.	The Tulane	45-15 Colden Street, Flushing
(y) Twin Leasing Corp.	The Arkansas	84-19 51st Avenue, Elmhurst
(z) London Leasing Corp.	The London	96-02 57th Avenue
(aa) La France Leasing Corp.	The Paris	96-04 57th Avenue
(bb) Copenhagen Leasing Corp.	The Copenhagen	96-08 57th Avenue
(cc) Rome Leasing Corp.	The Rome	96-10 57th Avenue
(dd) Canada Leasing Corp.	The Canada	97-20 57th Avenue
(ee) Mexico Leasing Corp.	The Mexico	97-22 57th Avenue
(ff) Panama Leasing Corp.	The Panama	97-28 57th Avenue
(gg) Uess Leasing Corp.	The U.S.	97-30 57th Avenue
(hh) L.S.S. Leasing Company, Sections I, II, and III	Social Security Bldg. (Section 1)	96-05 Horace Harding Expressway
	Parking Garage (Section 2)	58-17 Junction Blvd.
	Post Office (Section 2)	59-01 Junction Blvd.
	1 Lefrak City Plaza (Section 3)	59-17 Junction Blvd.
(ii) Amherst Leasing Corp.	The Amherst	845 43rd Street, Bklyn.

Name of Corporation	Building name, type of building, or type of corporation	Location
(jj) Annapolis Leasing Corp.	The Annapolis	2815 Coyle Street, Bklyn.
(kk) Arcadia Leasing Corp.	The Arcadia	3232 Shore Parkway, Bklyn.
(ll) Atlantis Leasing Corp.	The Atlantis	3235 Emmons Ave., Brooklyn
(mm) Bel Air Leasing Corp.	The Bel Air	2775 East 12th St., Brooklyn
(nn) Belt Parkway Construction Corp.	The Pasadena	2625 East 13th St., Brooklyn
(oo) Buick Leasing Corp.	The Beverly Hills	2626 Homecrest Ave., Brooklyn
(pp) Citadel Leasing Corp.	The Citadel	1 Prospect Park SW, Brooklyn
(qq) Colgate Leasing Corp.	The Colgate	4411 Church Avenue, Brooklyn
(rr) Cornell Leasing Corp.	The Cornell	665 New York Avenue, Bklyn.
(ss) Country Leasing Corp.	Kings Bay Shop Ctr.	3861 Nostrand Avenue, Bklyn.
(tt) Dartmouth Leasing Corp.	The Dartmouth	4114 9th St., Brooklyn
(uu) District Leasing Corp.	The Maine	250 East 38th Street, Bklyn.
(vv) Dodge Leasing Corp.	The Princeton	95 Rutland Road, Brooklyn
(ww) Dover Leasing Corp.	The Dover	2375 East 3rd Street, Bklyn.
(xx) Rakfel Realty Corp.	Apartments	2047-2054-2064 Nostrand Ave., Brooklyn
(yy) Stanford Leasing Corp.	The Stanford	1625 Rockaway Parkway, Bklyn.
(zz) Syracuse Leasing Corp.	The Syracuse	1115 Willmohr Street, Bklyn.

Name of Corporation	Building name, type of building, or type of corporation	Location
(aaa) Virginia Gardens, Inc.	Virginia Gardens	3502 Kings Highway, Bklyn.
(bbb) West Point Leasing Corp.	The West Point	333 East 92nd St., Brooklyn
(ccc) Westport Leasing Corp.	The Westport	2800 Coyle Street, Bklyn.
(ddd) Wetherole Holding Corp.	The Wetherole	295 Clinton Ave., Brooklyn
(eee) Yaille Leasing Corp.	The Yaille	2440 East 29th St., Brooklyn
(fff) Carolina Gardens, Inc.	Carolina Gardens	2862 Hylan Blvd. New Dorp., Staten Island
(ggg) Olmstead Housing Co., Inc.	Boulevard Towers	2010 Bruckner Blvd., Bronx 2nd Building 2040 Bruckner Blvd., Bronx
(hhh) Carnegie East, Inc.		148 W. 57th Street; 137 West 56th St., Manhattan
(iii) West Side Manor, Inc.	West Side Manor	70 West 95th Street, Manhattan
(jjj) Monticello Leasing Corp.	The Monticello	30 Park Ave., Mt. Vernon, West Chester
(kkk) Quincy Leasing Corp.	The Quincy	11 Park Ave., Mt. Vernon, West Chester
(lll) Mt. Vernon Shopping Center, Inc.	Stores	East Prospect Avenue. Mt. Vernon, West Chester

Name of Corporation	Building name, type of building, or type of corporation	Location
(mmm) Georgetown Leasing Corp.	The Georgetown	170 East 4th Street, Bklyn.
(nnn) Hampton Leasing Corp.	The Hampton	3205 Emmons Ave., Bklyn.
(ooo) Harvard Leasing Corp.	The Harvard	4190 Bedford Ave., Bklyn.
(ppp) Hollywood Leasing Corp.	The Hollywood	2750 Homecrest Ave., Brooklyn
(qqq) Kings Highway Property Corp.	The Idaho	3900 Kings Highway, Bklyn.
(rrr) Life Management Co.	The Nevada	2021 East 41st St., Brooklyn
(sss) Minnesota Leasing Corp.	The Minnesota	1145 East 35th St., Brooklyn
(ttt) Montauk Leasing Corp.	The Montauk	3191 Emmons Ave., Brooklyn
(uuu) Nautilus Leasing Corp.	The Nautilus	2790 Bragg Street, Bklyn.
(vvv) Northwestern Leasing Corp.	The Northwestern	425 East 96th St., Brooklyn
(www) Oxford Leasing Corp.	The Oxford	288 Bay 38th St., Brooklyn
(xxx) Plymouth Leasing Corp.	The Plymouth	410 Avenue X, Brooklyn
(yyy) Pontiac Leasing Corp.	The Westwood	2611 East 13th St., Brooklyn
(zzz) Portland Leasing Corp.	The Portland	2411 East 3rd St., Brooklyn

Name of Corporation	Building name, type of building, or type of corporation	Location
(aaaa) Prospect Park Housing Co., Inc.	Prospect Towers	341 10th Street, Bklyn.
(bbbb) Purdue Leasing Corp.	The Purdue	450 Rockaway Parkway, Bklyn.
(cccc) Rapid Rehabilitation Corp.	General Contractor	97-77 Queens Blvd., Forest Hills
(dddd) Lefrak Construction Corp.	General Contractor	97-77 Queens Blvd., Forest Hills
(eeee) Skyhigh Construction Corp.	General Contractor	97-77 Queens Blvd., Forest Hills
(ffff) Prospark Construction Corp.	General Contractor	97-77 Queens Blvd., Forest Hills
(gggg) Lefrak Jersey Construction	General Contractor	97-77 Queens Blvd., Forest Hills

4. Each plaintiff partnership, identified herein, was created pursuant to the laws of the State of New York and each has its principal place of business at 97-77 Queens Boulevard, Forest Hills, New York. The plaintiff partnerships, the real estate owned and the locations of such real estate for each partnership are as follows:

Name of Partnership	Building name or type of building	Location
(a) California Leasing Co.	The California	64-20 Saunders Street
(b) Eastport Leasing Company	Esso Gas Station	35-20 Junction Blvd., Jackson Heights
(c) Maryland Leasing Company	The Maryland	97-50 Queens Boulevard, Forest Hills
(d) New Yorker Leasing Company	The New Yorker	103-25 68th Ave., Forest Hills
(e) Oak Leasing Co.	The Oak	105-40 62nd Road, Forest Hills
(f) Parc Plaza Associates	Parc Plaza	39-60 54 Street, Woodside
(g) Tennessee Leasing Company	The Tennessee	65-44 Saunders Street
(h) Argentine Leasing Company	The Argentine	97-05 Horace Harding Expressway
(i) Brazilia Leasing Company	The Brazilia	97-05 Horace Harding Expressway
(j) Peru Leasing Company	The Peru	97-11 Horace Harding Expressway

Name of Partnership	Building name or type of building	Location
(k) Columbia Leasing Company	The Columbia	97-15 Horace Harding Expressway
(l) Sydney Leasing Company	The Sydney	98-30 57th Avenue
(m) Brisbane Leasing Company	The Brisbane	98-32 57th Avenue
(n) Melbourne Leasing Company	The Melbourne	98-38 57th Avenue
(o) Wellington Leasing Company	The Wellington	98-40 57th Avenue
(p) Ceylon Leasing Company	The Ceylon	98-15 Horace Harding Expressway
(q) Singapore Leasing Company	The Singapore	98-17 Horace Harding Expressway
(r) Shalimar Leasing Company	The Shalimar	98-23 Horace Harding Expressway
(s) Mandalay Leasing Company	The Mandalay	98-25 Horace Harding Expressway
(t) Expressway Shopping Center	Stores	57-02 to 58-28 99th Street
(u) Harding-Shopping Center	Stores	59-02 to 60-06 99th Street

Name of Partnership	Building name or type of building	Location
(v) Lefrak Theatre Company	UA Theatre	59-16 99th St.
(w) Ridge Leasing Company		7410-7420 Ridge Blvd., Brooklyn
(x) Lefrak SBN Associates	The Squibb Building	40 W. 57th St., N.Y., Manhattan
(y) Westchester Plaza Housing Company	The Saratoga	40 East Sidney Ave., Mt. Vernon, West Chester
(z) Hempstead Plaza Housing Company	The James Monroe	251 Jackson St., Hempstead
	The James Madison	150 West Columbia St., Hempstead
(aa) National Realty Company	The Oceanside	1640 Ocean Parkway, Brooklyn
	The Parkway	8301 Bay Parkway, Brooklyn
	The Heights	35 Pierrepont Street, Brooklyn
(bb) Harrison and Associates	Harrison Towers	Township of Franklin, 557 Easton Ave., Somerset County, New Jersey

5. Plaintiff trustees, Samuel J. Lefrak and Ethel Lefrak, are trustees under a trust of Harry Lefrak, dated October 1, 1955, for the benefit of Richard Lefrak, Francine Lefrak and Denise Lefrak Bandier. The trustees principal place of business is 97-77 Queens Boulevard, Forest Hills, New York. The property held by the trust includes the following real estate:

(a) Illinois Leasing Company, The Illinois, 68-25 Clyde Street, Forest Hills, New York; and

(b) Delaware Leasing Company, The Delaware, 7705 Bay Parkway, Brooklyn, New York.

6. Each plaintiff is part of a common business enterprise and operates in a coordinated manner in connection with the matters relevant to this litigation. The common enterprise of the plaintiffs is the construction, ownership, management and rental of residential and commercial real estate located in the New York metropolitan area.

7. The defendants (hereinafter collectively "defendant petroleum companies"), each of which is found or transacts business in the Eastern District of New York, as well as other judicial districts in New York, are the corporations named below. Each of said defendants is organized and exists under the laws of the state or county, and has its principal place of business in the city indicated below:

of Corporation	State or County of Incorporation	Place of Business	Hereinafter Referred to as
ian-American Company	Delaware	Dhahran, Saudi Arabia	Aramco
ic Petroleum oration	Delaware	New York, NY	Asiatic
Corporation	New Jersey	New York, NY	Exxon
Oil Corporation	Pennsylvania	Pittsburgh, PA	Gulf

Name of Corporation	State or County of Incorporation	Place of Business	Hereinafter Referred to a:
Mobil Oil Corporation	New York	New York, NY	Mobil
Royal Dutch Petroleum Company	The Netherlands	The Hague, The Netherlands	Royal Dutch
Shell Petroleum, N.V.	The Netherlands	The Hague, The Netherlands	Shell Holding Company
Standard Oil Company of California	Delaware	San Francisco, CA	Socal
Texaco, Inc.	Delaware	New York, NY	Texaco
The Shell Petroleum Company, Limited	United Kingdom	London, England	Shell Holding Company
The Shell Trading and Transport Company, Limited	United Kingdom	London, England	Shell

8. Whenever reference is made herein to any of the defendant petroleum companies listed in paragraph 7 hereof, such reference shall be deemed to include the corporation and any of its predecessors, subsidiaries, and affiliates which have been or are in any way involved in or related to the subject matter of this litigation.

9. Defendants Exxon, Gulf, Mobil, Socal and Texaco are fully integrated petroleum companies operating at the five basic levels of petroleum company operations: the exploration and production of crude oil, the transportation of crude oil, the refining of crude oil, the transportation of refined petroleum products and the marketing of refined petroleum products.

10. Defendant, Arabian-American Oil Company (hereinafter "Aramco") is a company engaged in the exploration for, and the production, refining and transportation of, crude oil within Saudi Arabia, operating under a concession granted by the Government of Saudi Arabia. Aramco was originally owned by Socal (30%), Texaco (30%), Exxon (30%) and Mobil (10%) until December 20, 1972. At that time, by agreement with the Government of Saudi Arabia, effective January 1, 1973, the Government of Saudi Arabia became a 25% owner in defendant, Aramco, and the interests of Socal, Texaco and Exxon were reduced to 22-1/2% each and the interest of Mobil to 7-1/2%. Currently, the Government of Saudi Arabia owns a share greater than 25% and the ownership interests of Socal, Texaco, Exxon and Mobil have been proportionally reduced. Defendant, Aramco, is engaged in the exporting of crude and refined oil products to the United States, including New York State, is licensed to do business therein, and has an office in New York City.

11. Defendants, Royal Dutch and Shell are the parent companies of what is commonly referred to as the Royal Dutch/Shell Group. These two companies do not form part of the Group and do not engage directly in operations. Royal Dutch, a Netherlands company, has a 60% interest in the Group and Shell, a United Kingdom company, has a 40% interest. The Group consists of two holding companies

which are part of the Group, defendants Shell Petroleum N.V. and The Shell Petroleum Company, Limited, which are owned 60% by Royal Dutch and 40% by Shell. The rest of the Group consists of a large number of operating companies, owned in the same 60-40 ratio by the two holding companies and thereby owned in the same ratio by Royal Dutch and Shell. Royal Dutch and Shell appoint the directors of the holding companies and receive their income from the holding companies in the form of dividends.

12. Defendant, Asiatic is a 100% owned "Group" company, 60% of whose shares are ultimately owned or controlled by Royal Dutch and 40% by Shell. Asiatic is engaged in selling heating oil, primarily No. 6 oil and a smaller amount of No. 2 oil, almost entirely on the Eastern seaboard of the United States.

13. Certain companies not made defendants herein and presently unknown to the plaintiff, including but not limited to certain distributors, have participated as co-conspirators in the offenses charged herein. Said conspirators may be named as additional defendants after their identity and the nature and extent of their participation in the conspiracy has been ascertained.

14. The trade and commerce involved herein is in petroleum and products thereof, such words being defined

to mean crude oil and products refined therefrom including, but not limited to heating oil, defined herein to include Number 6, Number 4, and Number 2 oil. Each of defendant petroleum companies is engaged in the business of producing, refining, transporting, importing and/or marketing of petroleum and products thereof, which products, including heating oil, have ultimately been delivered to plaintiff by distributors and other persons not named herein. In the normal course of business, defendants regularly put substantial quantities of said petroleum and petroleum products in commerce among the several states of the United States and/or from the United States to foreign countries and/or from foreign countries to the United States in interstate and foreign commerce of the United States. The value of said petroleum and petroleum products amounts to billions of dollars each year.

15. For many years and in particular from 1968 through the date of this Complaint, plaintiffs have purchased substantial quantities of petroleum products including heating oil for use in supplying heat to their properties identified above. Plaintiffs' buildings house in excess of 50,000 tenants. The quantities of such oil purchased ranged from 11.5 million gallons in 1968 to approximately 15 million gallons in the 1973-74 heating season.

16. Plaintiffs have purchased their heating oil from Castle Coal & Oil Company, Inc. ("Castle"), Whaleco Fuel Corporation ("Whaleco"), Howard Fuel Corporation, ("Howard"), Premium Coal & Oil Company ("Premium"), and Whale Oil Company ("Whale"), each of which is a New York corporation, which transacts business and is found in the Eastern District of New York, as well as other judicial districts in New York. Each of these entities (hereinafter collectively referred to as "distributors") is a heating oil distributor which purchases heating oil for resale from one or more of defendant petroleum companies referred to in Paragraph 7 above, and/or other petroleum companies, the price of which heating oil has been illegally established pursuant to the unlawful conspiracy alleged herein. Each of these distributors has resold heating oil to plaintiffs at prices which were established by the defendants in violation of the Sherman Act.

17. In connection with the purchase of petroleum and products thereof, including but not limited to heating oil, each plaintiff has operated and continues to operate through the use of the same authorized agents for negotiating contracts for the purchase of petroleum and products thereof, executing said contracts and making disbursements to vendors for the separate account of each individual plaintiff. These agents include, but are not limited to,

the Lefrak Organization, Inc., the Lefrak Management Company, Samuel J. Lefrak Agency Disbursement Fund, Inc., Lefrak Mutual Agency Disbursement Fund, Inc., EST Agency Fund, Inc., and Lefrak Management Corporation. Notwithstanding the use of these agents, with respect to the subject matters of this action, each of the plaintiffs has been billed for, paid for and used the petroleum and products thereof for which a claim is made.

18. With specific reference to heating oil, the cost to plaintiffs of their purchase of heating oil from the distributors is based upon the posted prices of the defendants or other petroleum companies, the prices being the result of the violations of the Sherman Act set forth herein. In this connection, the entire amount of the distributors' costs of heating oil is passed on to plaintiffs. This cost, the defendants' price to distributors, is easily identifiable because the distributors' cost is also fixed to a posted price of some defendant petroleum companies or other petroleum companies.

19. In addition to the purchase of petroleum and petroleum products, plaintiffs have purchased from Consolidated Edison Company of New York, Inc. ("ConEd") and Long Island Lighting Company ("Lilco"), substantial quantities of electrical power. The price of the electrical power has

been directly affected by the "oil price adjustment" whereby the cost of the increased price of fuel oil has been passed on directly to the plaintiffs. These price increases in electricity are also the direct result of the defendants' illegal conspiracy and combination described below.

20. For many years past, the exact dates being unknown to the plaintiffs, but some time prior to 1968, and continuing thereafter until the present, there have been contracts and a continuous and unlawful combination and/or conspiracy to restrain interstate and foreign commerce in petroleum and petroleum products previously described in violation of Section 1 of the Act, in which conspiracy the various defendants and co-conspirators joined and participated in from time to time to the date of the Complaint.

21. In furtherance of the aforesaid contracts, combination and conspiracy, the defendants, co-conspirators and persons acting in their behalf performed the various acts and conduct which they agreed to do, including, inter alia:

(a) Formation and implementation of a combine to control the production and shipping of oil from the Persian Gulf;

(b) Creation and use of Aramco by Exxon, Mobil, Socal and Texaco to control the production and price of Saudi-Arabian oil;

(c) Formation, implementation, and domination of the Iranian Consortium by defendants Royal Dutch, Shell, the Shell Holding Companies, Exxon, Mobil, Texaco, Gulf, Socal and unnamed co-conspirators British Petroleum Company and Compangnie Francaise des Petroles.

(d) Creation, pursuant to the Iranian Participation Agreement entered into by the Consortium members, of the Aggregate Programmed Quantity System ("APQ"), an arrangement whereby the defendants named in subparagraph (c) above systematically controlled, at artificially low levels, the amount of crude oil produced by the Consortium;

(e) Formation and implementation of the Message to OPEC and the Libyan Producers Agreement and amendments thereto which created a combination whereby defendants Exxon, Mobil, Royal Dutch, Shell, the Shell Holding Companies, Socal and Texaco, all Libyan producers, could operate jointly to control their oil supply and to negotiate as a unit;

(f) Formation and implementation by defendants Exxon, Gulf, Mobil, Royal Dutch, Shell and the Shell Holding Companies, Socal, and Texaco of the London Policy Group, New York Advisory Committee and the New York "meetings of chiefs", each of which was part of a combination to contr[illegible] oil supply and price for each member of that group and to serve as a communications center for planning policy for the members of the Group;

(g) Participation in a complex network of joint business ventures throughout the world, for example, the formation and implementation of American Overseas Petroleum, Ltd., a company engaged in crude oil production in Libya, one of a series of companies owned jointly by defendants Socal and Texaco;

(h) Use of membership and relationship with industry, governmental and quasi-governmental groups, including but not limited to the Federal Energy Administration and its predecessors, the National Petroleum Council, The American Petroleum Institute and the Texas Railroad Commission as a means of exchanging information relevant to production and price, as a modus operandi and as a shield and vehicle for the combination and conspiracy; and

(i) Use of long-term sales contracts between some of the defendants and others to sell crude oil to each other.

22. The purpose of the acts and conduct undertaken pursuant to the conspiracy was to:

(a) Secure, maintain and exercise control of foreign production and supplies of petroleum and petroleum products;

(b) Cause domestic production of petroleum and petroleum products to be curtailed or restricted in amounts related to imports of foreign petroleum and petroleum products and, to the extent necessary, to maintain the

domestic and world prices of petroleum and products at artificially high levels agreed upon by the defendants;

(c) Allocate among themselves foreign producing and marketing territories;

(d) Agree upon, fix, maintain and correlate domestic and world prices of petroleum and products;

(e) Establish and maintain quotas for the marketing of petroleum and products in the foreign markets and areas;

(f) Control imports of petroleum and petroleum products into the United States;

(g) Control petroleum companies other than defendant petroleum companies and their subsidiaries and affiliated companies in the foreign production and refining of petroleum and petroleum products and restrain them from importing said products into the United States; and

(h) Control petroleum companies other than defendants and their subsidiaries and affiliated companies in the importation into the United States of petroleum and other products produced in foreign countries by defendants and their co-conspirators.

23. The aforesaid offenses have had, and continue to have, the following effects:

(a) The domestic production of petroleum and petroleum products has been substantially controlled by defendants and curtailed;

(b) The importation of petroleum and petroleum products into the United States for use domestically has been controlled by defendants and curtailed;

(c) The prices of petroleum and petroleum products have been fixed, stabilized and maintained at non-competitive and artificially high levels;

(d) Price competition between distributors has been restrained;

(e) Competition from other petroleum companies and other distributors has been restrained; and

(f) Plaintiff has been denied the opportunity of purchasing petroleum and petroleum products in a free and open competitive market.

24. Plaintiff had no knowledge of the combination and conspiracy alleged herein, or of any facts which might have led to the discovery thereof, until shortly before filing its Complaint and plaintiff could not have discovered the conspiracy at an earlier date by the exercise of due diligence because of deceptive practices and techniques of secrecy employed by defendants to avoid detection and fraudulently conceal such combination and conspiracy.

25. By reason of defendants' conspiracy hereinabove alleged, plaintiffs' aforesaid purchases were made at prices higher than prices which plaintiff would have had to pay under natural conditions of competition in the absence

of any such conspiracy, and plaintiff has thereby been injured and damaged. Plaintiff estimates its single damages will exceed $10,000,000.00.

WHEREFORE, plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of interstate trade and commerce in violation of §1 of the Sherman Act;

B. That defendants be enjoined from continuing the acts and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants for $30,000,000, treble the amount of damages suffered by plaintiff, together with the cost of suit, including a reasonable attorneys' fee; and

D. That plaintiff shall have such other and further relief as may appear appropriate.

COUNT II

26. This Count is filed under §74 of the Act of Congress of August 17, 1894, C. 349, 28 Stat. 570 (15 U.S.C. §8), commonly known as the Wilson Tariff Act.

27. Paragraphs 2 through 25 inclusive of this Complaint are incorporated by reference and realleged herein.

28. Defendants intended the natural consequence and effects of their acts, agreements and conspiracy, all of which is in violation of §73 of the Wilson Tariff Act (15 U.S.C. §8).

WHEREFORE, plaintiff demands:

A. That the alleged combination and conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of import trade and commerce in violation of §73 of the Wilson Tariff Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That judgment be entered against defendants and in favor of plaintiff for treble damages determined to have been sustained by plaintiff, together with the cost of suit including a reasonable attorneys' fee; and

D. Such other and further relief as may appear necessary and appropriate.

COUNT III

29. This Count is filed under New York Laws 1909 C. 25 §1, commonly known as the Donnelly Act, 22 New York General Business Law, §340 (hereinafter "Donnelly Act"). Jurisdiction of this Court is based on pendent jurisdiction.

30. Paragraphs 2 through 25 of this Complaint are incorporated by reference and realleged herein.

31. The aforesaid combination and conspiracy establishes a combination whereby competition and the free exercise of business, trade and commerce in the State of New York is restrained in violation of the Donnelly Act.

32. In committing the acts and conspiracies hereinbefore alleged, defendants knew or should have known that the control of production, distribution and pricing of petroleum products, particularly in the Northeastern portion of the United States could and would flagrantly, egregiously, and adversely affect and harm the millions of people who live and work in that area of this country, particularly plaintiff and those in plaintiff's position. Defendants also knew or should have known that to exercise such control of production, distribution and pricing of petroleum and petroleum products could and would result in widespread public concern about oil shortages and enormous price increases, particularly with respect to the availability of

fuel heating supplies and vitally necessary electric energy. These persons include tenants of plaintiff who are and were concerned over both the supply of heating fuel and the availability and high cost of heating fuel and electrical energy so indispensable to their existence. During the winter of 1973-74, such concerns reached panic proportions among the over 50,000 tenants of plaintiff. These acts constitute malicious and wanton conduct which demands the imposition of punitive damages as hereinafter alleged.

33. This concern resulted in many communications to the Lefrak Organization expressing such fears, resulting in increased difficulty and expense of plaintiff's operation.

34. Each of defendants is among the nation's largest corporations and has assets of many billions of dollars.

WHEREFORE, plaintiff demands:

A. That the alleged combination conspiracy among defendants be adjudged and decreed to be an unreasonable restraint of business, trade and commerce in violation of §1 of the Donnelly Act;

B. That defendants be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

C. That plaintiff be awarded damages determined to have been sustained by plaintiff;

D. That judgment be awarded for $75,000,000 punitive damages against defendants and in favor of plaintiff; and

E. Such other and further relief as may appear necessary and appropriate.

OF COUNSEL:
David Berger, P.A.
Attorneys-At-Law
1622 Locust Street

David Berger
Stanley R. Wolfe
1622 Locust Street
Philadelphia, PA 19103

and

Richard S. Lefrak
97-77 Queens Boulevard
Forest Hills, NY 11375

Attorneys for Plaintiff

DATED: December 3, 1974.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, ASIATIC PETROLEUM CORPORATION, EXXON CORPORATION, GULF OIL CORPORATION, MOBIL OIL CORPORATION, ROYAL DUTCH PETROLEUM COMPANY, SHELL PETROLEUM, N.V., STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., THE SHELL PETROLEUM COMPANY, LIMITED and THE SHELL TRANSPORT AND TRADING COMPANY, LIMITED, Defendants.	Civil Action No. 74-C-1700 (M.A.C.) PRETRIAL ORDER NO. 1

The action entitled Lefrak Organization, Inc. v. Arabian American Oil Company, et al., 74-C-979 filed on July 2, 1974 ("the Lefrak Organization, Inc. action") having been dismissed on January 10, 1975 without prejudice,

IT IS ORDERED that in the interests of avoiding duplicative discovery procedures and of judicial economy and efficiency:

A. Discovery limited to issue of standing

1. All discovery in this action is hereby stayed subject to further order of the Court except discovery limited to the issue of plaintiffs' standing to maintain this action.

B. Order of Confidentiality

2. On or before January 21, 1975 counsel for the parties shall meet to agree upon an order of confidentiality to apply to all discovery matters in this action. In the

event there is no agreement, the parties shall submit to the Court on or before January 27, 1975 such proposed orders of confidentiality as they deem appropriate.

C. Interrogatories on issue of standing

3. The following interrogatories served by plaintiff Lefrak Organization, Inc. in the Lefrak Organization, Inc. action, limited to the question of plaintiffs' standing to sue and limited where applicable to the subject of No. 6 oil, shall be deemed as of the date of this order to have been served in this action by plaintiffs upon the defendants*:

(a) the interrogatories served by plaintiff Lefrak Organization, Inc. on or about October 22, 1974; and

(b) the supplemental interrogatories served by plaintiff Lefrak Organization, Inc. on or about November 6, 1974.

4. The following answers and objections to interrogatories served by defendants in the Lefrak Organization, Inc. action to the interrogatories referred to in paragraph 3 of this order shall be deemed as of the date of this order to have been served in this action:

(a) answers and objections dated December 2, 3 and 10, 1974 served by defendant Mobil Oil Corporation; and

(b) answers and objections dated December 9, 1974 served by Standard Oil Company of California.

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* This order includes all defendants named in the complaint other than Royal Dutch Petroleum Company, Shell Petroleum, N.V., The Shell Petroleum Company, Limited and The Shell Transport and Trading Company, Limited which have not appeared in this action.

5. Within 14 days after the entry of an order of confidentiality pertaining to discovery proceedings in this action, defendants Arabian American Oil Company, Exxon Corporation and Texaco, Inc. shall serve answers to the interrogatories referred to in paragraph 3 of this order.

6. With respect to defendants Asiatic Petroleum Company and Gulf Oil Corporation, the interrogatories referred to in paragraph 3 of this order shall be deemed to have been served by plaintiffs upon such defendants as of the date of this order.

7. The following interrogatories served by the defendants in the Lefrak Organization, Inc. action, limited to the question of plaintiffs' standing to sue and limited where applicable to the subject of No. 6 oil, shall be deemed as of the date of this order to have been served in this action by those defendants upon the plaintiffs:

(a) those defendants' joint interrogatories dated October 1, 1974.

8. The following answers and objections to interrogatories served by the plaintiff in the Lefrak Organization, Inc. action to the interrogatories referred to in paragraph 7 of this order shall be deemed as of the date of this order to have been served by the plaintiffs upon those defendants in this action:

(a) answers served by plaintiff Lefrak Organization Inc. on or about November 6, 1974.

D. Production of documents relating to standing

9. The following request for production of documents served by defendant Mobil Oil Corporation in the Lefrak

Organization, Inc. action shall be deemed as of the date of this order to have been served in this action by defendants Mobil Oil Corporation upon the plaintiffs:

(a) the request for production of documents dated July 5, 1974 served by Mobil Oil Corporation.

10. The following documents produced by the plaintiff in the Lefrak Organization, Inc. action in response to the request for production of documents referred to in paragraph 9 of this order shall be deemed as of the date of this order to have been produced by the plaintiffs in this action:

(a) the documents produced by plaintiff Lefrak Organization, Inc. on September 16, 1974.

11. The following requests for production of documents served by the plaintiff in the Lefrak Organization, Inc. action, limited to the question of plaintiffs' standing to sue and limited where applicable to the subject of No. 6 oil, shall be deemed as of the date of this order to have been served in this action by plaintiffs upon the defendants:

(a) the request for production of documents served by plaintiff Lefrak Organization, Inc. on or about September 20, 1974; and

(b) the supplemental request for production of documents served by plaintiff Lefrak Organization, Inc. on or about November 6, 1974.

12. The following responses made by defendants Arabian American Oil Company, Standard Oil Company of California and Mobil Oil Corporation in the Lefrak Organization, Inc. action in response to the request for production of documents referred to in paragraph 11 of this order shall

be deemed as of the date of this order to have been produced and served by defendants Standard Oil Company of California and Mobil Oil Corporation in this action:

(a) the response made by Arabian American Oil Company on November 5, 1974;

(b) the documents produced and objections noted by Standard Oil Company of California on November 6, 1974 and December 9, 1974;

(c) the documents produced and objections noted by Mobil Oil Corporation on November 22, 1974, and the objections made by Mobil Oil Corporation on December 9, 1974.

13. Within 14 days after the entry of an order of confidentiality pertaining to discovery proceedings in this action, defendants Exxon Corporation and Texaco, Inc. shall respond to the request for the production of documents referred to in paragraph 11 of this order.

14. With respect to defendants Asiatic Petroleum Company and Gulf Oil Corporation, the request for the production of documents referred to in paragraph 11 of this order shall be deemed to have been served by plaintiffs upon such defendants as of the date of this order.

15. The following request for production of documents served by the defendants in the Lefrak Organization, Inc. action, limited to the question of plaintiffs' standing to sue and limited where applicable to the subject of No. 6 oil, shall be deemed as of the date of this order to have been served in this action by those defendants upon the plaintiffs:

(a) those defendants' joint request for production of documents dated September 30, 1974.

16. The following documents produced by the plaintiff in the Lefrak Organization, Inc. action in response to the request for production of documents referred to in paragraph 15 of this order shall be deemed as of the date of this order to have been produced by the plaintiffs in this action:

(a) the documents produced by plaintiff Lefrak Organization, Inc. on November 6, 1974.

E. Depositions on issue of standing

17. The notice of deposition dated July 15, 1974 served by Mobil Oil Corporation in the Lefrak Organization, Inc. action shall be deemed as of the date of this order to have been served in this action and the deposition of plaintiff Samuel J. Lefrak and of plaintiffs by Arthur Klein shall be taken on a date to be fixed by agreement of counsel.

F. Additional discovery relating to the issue of standing

18. On or before January 20, 1975 defendant Asiatic Petroleum Company shall by notice in writing specify which interrogatories, if any, of the set of interrogatories served on or about December 19, 1974 are related to the issue of plaintiffs' standing to maintain this action.

19. On or before February 15, 1975 plaintiffs and defendants (other than defendants Asiatic Petroleum Corporation and Gulf Oil Corporation) shall serve any additional interrogatories, requests for production of documents and deposition notices related to the issue of plaintiffs' standing to maintain this action which they may deem necessary and are not duplicative of prior discovery. Defendants Asiatic Petroleum Corporation and Gulf Oil Corporation shall serve such discovery requests by a date to be fixed by the Court.

G. Time for motions relating to the issue of standing

20. Within 30 days of completion of discovery limited to the issue of plaintiffs' standing to maintain this action, or within 15 days after the disposition by the Court of any motions addressed to the complaint, whichever shall be later, defendants shall serve all motions directed to such issue. Within 21 days of service of such motions plaintiffs shall serve their answering papers in opposition thereto, and within 14 days thereafter defendants shall serve any reply papers with respect to such motions. The motions shall be heard on a date to be fixed by the Court.

Dated: Brooklyn, New York
January , 1975

U.S.D.J.

Order to Show Cause Dated February 21, 1975 by Costantino, J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al.,		
Plaintiffs,	:	Civil Action No. 74-C-1700
-against-	:	(M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al.,	:	
Defendants.	:	
NEW YORK CITY HOUSING AUTHORITY,	:	
Plaintiff,	:	Civil Action No. 75-C-15
-against-	:	(M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al.,	:	
Defendants.	:	
ROCHDALE VILLAGE, INC.,	:	
Plaintiff,	:	Civil Action No. 75-C-135
-against-	:	(M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al.,	:	ORDER TO SHOW CAUSE
Defendants.	:	

Upon The Lawyer's Code of Professional Responsibility, the New York Judiciary Law and upon the annexed affidavit of Robert MacCrate, sworn to February 21, 1975, the annexed affidavit of Fredric S. Newman, sworn to February 21, 1975, the annexed affidavit of Robert M. Osgood,

sworn to February 21, 1975, and all prior proceedings in these three actions and in the prior action entitled "Lefrak Organization, Inc. v. Arabian American Oil Co., et al.", 74-C-979, dismissed by order of this Court dated January 10, 1975; and sufficient cause appearing therefore, it is hereby

ORDERED that plaintiffs and their counsel, a visiting lawyer appearing in these cases pro hac vice subject to the provisions of Local Rule 3(c) of this Court, David Berger, P.A., Attorneys at Law, 1622 Locust Street, Philadelphia, Pennsylvania, show cause before this Court in Room 2 of the United States Court House, 225 Cadman Plaza East, Brooklyn, New York at 11:30 A.M. on ~~February 28,~~ March 6, 1975, or as soon thereafter as counsel can be heard, why an order should not be entered:

1. Enjoining

(i) David Berger, P.A. and all counsel associated with David Berger, P.A. or otherwise representing any plaintiff in these actions,

(ii) the plaintiffs in these actions, and

(iii) all other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise,

from stirring up claims against defendant Exxon Corporation, soliciting clients and communicating directly or indirectly, orally or in writing, with any potential plaintiff not a formal party to these actions without prior consent and approval of this Court;

2. Disqualifying David Berger, P.A. from further prosecuting claims against defendant Exxon Corporation in these cases;

3. Granting such further relief as this Court deems just and proper.

ORDERED that pending hearing ~~and determination~~ of this motion

(i) David Berger, P.A. and all counsel associated with David Berger, P.A. or otherwise representing any plaintiff in these actions,

(ii) the plaintiffs in these actions, and

(iii) all other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise,

shall ~~not communicate directly or indirectly orally or in writing, with any~~ keep a record of any communications from any potential plaintiffs ~~not a formal party to these actions without the prior consent and approval of this Court,~~ as of the date of this order in these cases, and the persons identified in (i), (ii) and (iii) above shall not initiate communications with potential plaintiffs and it is further

ORDERED that service of a copy of this order to show cause and the annexed affidavits made on the plaintiffs herein and upon their attorneys by delivering a copy to David Berger, P.A. on or before 6 P.M. on the 21st day of February, 1975 shall be deemed good and sufficient service.

Dated: New York, New York
February 21, 1975

U.S.D.J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al.,		
Plaintiffs,	:	Civil Action No. 74-C-1700 (M.A.C.)
-against-	:	
ARABIAN AMERICAN OIL COMPANY, et al.,	:	
Defendants.	:	
NEW YORK CITY HOUSING AUTHORITY,	:	
Plaintiff,	:	Civil Action No. 75-C-15 (M.A.C.)
-against-	:	
ARABIAN AMERICAN OIL COMPANY, et al.,	:	
Defendants.	:	
ROCHDALE VILLAGE, INC.,	:	
Plaintiff,	:	Civil Action No. 75-C-135 (M.A.C.)
-against-	:	
ARABIAN AMERICAN OIL COMPANY, et al.,	:	AFFIDAVIT
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT MacCRATE, being duly sworn, deposes and says:

I am a member of the Bar of this Court and of the firm of Sullivan & Cromwell, attorneys for defendant Exxon Corporation. I submit this affidavit in support of

the proposed order to show cause of Exxon Corporation submitted to this Court on February 21, 1975.

Documents have come to our attention which suggest that attempts are underway to stir up additional claims against Exxon Corporation and the other defendants in these cases, in violation of The Lawyer's Code of Professional Responsibility and other principles embodied in state law and the Rules of this Court. We are obliged to bring this matter to the Court's attention under Ethical Consideration 1-4 and Disciplinary Rule 1-103 of The Lawyer's Code.

We do not at this point seek to bar plaintiffs' attorneys from all future appearances before this Court on any matter, and do not seek to have the pending actions dismissed; rather, the Order to Show Cause requests that plaintiffs' attorneys, among others, be enjoined from stirring up claims, from soliciting clients, from communicating with potential plaintiffs and asks that after a hearing on the return date plaintiffs' attorneys be disqualified from further prosecuting the pending actions.

The first action in this series of antitrust actions was instituted on or about July 2, 1974 when David Berger, P.A. filed in this Court an action entitled Lefrak Organization, Inc. v. Arabian American Oil Co., et al. (74-C-979). That action was dismissed by this Court on January 10, 1975 after it appeared that plaintiff Lefrak Organization, Inc. had no real stake in this action since, contrary to the allegations of its own complaint, Lefrak Organization, Inc. had not purchased any heating oil, had not received delivery of any heating oil and had never paid for any heating oil.

Faced with defendant's motion to dismiss the complaint in the first action, the Berger firm filed a second action in this Court on December 3, 1974 entitled Samuel J. Lefrak, et al. v. Arabian American Oil Co., et al.

Thereafter, on or about December 24, 1974 David Berger, P.A. filed in this Court a third antitrust action entitled New York City Housing Authority v. Arabian American Oil Co., et al. (75-C-15) and on or about January 29, 1975 filed in this Court a fourth antitrust action entitled Rochdale Village Inc. v. Arabian American Oil Co., et al. (75-C-135).

Meanwhile, the Berger firm announced in open court on January 10, 1975 (transcript p. 28):

> "We are going to have to have a substantial number of additional plaintiffs, some of whom fall into the same commercial relationship as Lefrak, others who may be cooperatives and the like."

As more fully set forth in the accompanying affidavits of Fredric S. Newman and Robert M. Osgood, both dated February 21, 1975, it now appears that potential plaintiffs are being approached wholesale and asked to retain Mr. Berger to represent them in the suit brought by "the Lefrak Organization". Exhibit A to the Newman affidavit is a circular letter to cooperative apartment board presidents accompanying "an agreement drawn by Mr. Berger", which was forwarded in duplicate with the circular letter and pursuant to which Mr. Berger would represent additional parties for "$1.00 per apartment" plus 1/3 of any settlement or any award granted by the Court.

Exhibit A to the Osgood affidavit, a circular letter sent by Mr. Gumley of Douglas L. Elliman & Co. to a substantial number of cooperative apartment houses, declares

in language identical to the circular letter attached to Mr. Newman's affidavit that "Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to antitrust and securities litigation." It later states: "We are bringing this matter to your attention so that you may decide whether, or not, you wish to join in this action. In the event you do make such a decision, we will be pleased to furnish, to the attorneys, all related information as to consumption, prices and billing on your behalf so as to establish your claim."

On their face, the circular letters attached to the Newman and Osgood affidavits appear to involve improper solicitation in violation of Section 479 of the New York Judiciary Law, Ethical Consideration 2-8 and Disciplinary Rules 2-103(c) and (d) of The Lawyer's Code of Professional Responsibility.

In aid of making a full presentation of this matter to the Court on the return date of this proposed Order to Show Cause, we ask leave of the Court to take the oral testimony of some of the individuals and organizations involved; we request that notwithstanding Pre-Trial Order Number 1 in the Samuel J. Lefrak action which limits discovery to the issue of plaintiffs' standing, the Court permit us to conduct the following depositions at the offices of Sullivan & Cromwell:

Norman Buchbinder, Sulzberger-Rolfe, Inc.	February 25, 1975 10:00 A.M.
Irwin Gumley, Douglas L. Elliman & Co., Inc.	February 26, 1975 10:00 A.M.

William J. Lippman, Esq. — February 26, 1975 2:00 P.M.

David Berger, Esq. — February 27, 1975 10:00 A.M.

No application for this or any similar relief has been made to this or to any other court in these actions.

Robert MacCrate

Sworn to before me this
21st day of February, 1975.

Notary Public

IRENE K. MENTEL
Notary Public, State of New York
Residing in Queens County
Queens Co. Clk's No. 41-7301895
Certificate Filed in
New York Co. Clk's
Commission Expires March 30, 1976

Affidavit of Frederic S. Newman, Sworn to February 21, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-135 (M.A.C.) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

FREDRIC S. NEWMAN, being duly sworn, deposes and says:

I am a member of the Bar of this Court and associated with the firm of White & Case, attorneys for defendant Arabian American Oil Company herein. I make this

affidavit in support of the order to show cause submitted by defendant Exxon Corporation.

I happen to be a member of the Board of Directors of the cooperative apartment building in which I live. Late in the evening of February 11, 1975, I received for my review and comments from the President of the Board of Directors of the cooperative apartment building, a letter from Sulzberger-Rolfe, Inc. dated February 6, 1975. Sulzberger-Rolfe, 654 Madison Avenue, New York, New York, is the managing agent of our cooperative building, and, on information and belief, Sulzberger-Rolfe is also the managing agent for many other New York City apartment cooperatives. Accompanying the letter were two copies of an agreement drawn by David Berger, P.A., relating to his proposed legal representation of our cooperative. (Attached hereto as Exhibit A are copies of the Sulzberger-Rolfe letter and the David Berger agreement which I received.)

There had been no consideration of these lawsuits by my Board of Directors prior to receipt of the attached.

The next day I called Mr. Norman Buchbinder of Sulzberger-Rolfe who had signed the letter and asked him what information he had about the lawsuits. Mr. Buchbinder told me that he knew nothing about the suits and suggested that I call Mr. William Lippman at Wien, Lane and Malkin whose name appears in the letter. Mr. Buchbinder told me that he had no other documents relating to the suits.

Fredric S. Newman

Fredric S. Newman

Sworn to before me this
21st day of February, 1975

Julia P. Horner
Notary Public

JULIA P. HORNER
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires March 30, 1976

Exhibit A—Letter

JA 113

SULZBERGER-ROLFE INC. REALTORS 654 MADISON AVENUE, NEW YORK, N.Y. 10021 • (212) 593-7600
7654

February 6, 1975

Dear Board President:

As you may have heard, a lawsuit has been brought by the Lefrak Organization against the major oil companies.

The suit is being prosecuted in the U.S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery. Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation

The firm of Wien, Lane & Malkin has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1.00 per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

The Complaint asks for millions of dollars in compensatory and punitive damages as well as injunctive relief against any further illegal conduct by the oil companies. The basis product involved in the lawsuit is heating oil used in residential buildings.

Many Boards of Directors of co-operative buildings in New York have already agreed to contribute $1.00 per unit in their buildings in return for receiving a proportion of the award which may be granted by the court.

I am enclosing an agreement drawn by Mr. Berger. I suggest that this agreement be presented as soon as possible to your Board of Directors for possible approval. If your Board approves, please return a signed copy of the agreement to me and I will take the necessary steps to have your building represen

If you have any questions, I suggest you call William Lippman at Wien, Lane and Malkin (687-2700).

Sincerely,
SULZBERGER-ROLFE INC.

DAVID BERGER, P.A., ATTORNEYS AT LAW

1622 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19103

(215) 732-8000

DAVID BERGER
H. LADDIE MONTAGUE, JR.
WARREN D. MULLOY
LEONARD HARRACK
STANLEY R. WOLFE
GERALD J. RODOS
JOEL C. MEREDITH
DANIEL E. BACINE
MICHAEL B. SIMON
BRUCE R. COHEN
PAUL J. MCMAHON
WARREN RUBIN
EDWARD M. RUBENSTONE
MERRILL G. DAVIDOFF
STEVEN J. GREENFOGEL

COUNSEL
ALEXANDER H. FREY
HAROLD BERGER

TELEX 834-309

Re: Lefrak Organization, Inc. v.
Arabian-American Oil Company, et al.
74 Civ. 979

Pursuant to your request we agree to represent you as an intervenor plaintiff in the above litigation instituted on behalf of Lefrak Organization, Inc. against major oil defendants seeking, inter alia, treble and punitive damages for federal and state antitrust violations resulting from substantial overcharges for certain petroleum products and electric fuel adjustment billings.

We agree to render all legal services necessary for the representation of your claim for damages in the above litigation for which we and associate counsel, if any, shall be entitled to a contingent fee of 33-1/3% of the amount received by you from defendants in damages, either by way of settlement or verdict or otherwise (after deduction for out-of-pocket expenses for which we will be reimbursed as set forth below). In the event the Court awards a counsel fee to be paid by defendants as a separate item over and above any recovery for damages sustained by you, such counsel fee shall be retained by us.

In order initially to defray the expenses of the litigation, you agree to contribute a sum equal to $1 for each unit in your buildings involved in your claims (each apartment or rental unit being regarded as a unit for this purpose). These expenses of litigation will include but will not be limited to such items as filing fees, costs

of transcripts, duplication costs, long distance telephone calls, travel expenses, costs of depositions, computer services, expert services of economists, investigators, etc. We will keep you fully advised of these expenses from time to time as they are being incurred.

You will fully cooperate with us and furnish our lawyers and others working on this case with all necessary and appropriate information so that we may vigorously and properly represent your interests in this litigation.

Please be good enough to sign the copy of this letter for our files.

With all best wishes, I am,

Sincerely,

David Berger

DB/pw

Approved and Accepted:

_____ _____

Date

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-135 (M.A.C.) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT M. OSGOOD, being duly sworn, deposes and says:

I am a member of the Bar of this Court and am associated with the firm of Sullivan & Crowmell, attorneys for defendant Exxon Corporation.

At approximately 4:00 P.M. on February 14, 1975 I called Mr. Stanley M. Parsil of the real estate management firm of Douglas L. Elliman & Co., 575 Madison Avenue, New York, New York. After identifying myself as an attorney for one of the oil company defendants, I asked Mr. Parsil whether his firm had received any communications suggesting that cooperative buildings under the management of Douglas L. Elliman might be interested in joining the pending lawsuits against the major oil companies, or whether his firm had itself sent any such letter to cooperatives under its management.

Mr. Parsil replied that approximately two weeks earlier Mr. Gumley, Senior Vice President of Douglas L. Elliman, sent a letter to the cooperatives which use oil-fired boilders for heating (between 75 and 100 buildings), suggesting that they may wish to join the lawsuit and contribute $1 per apartment to defray expenses. He said that the letter explained that David Berger of Philadelphia was the attorney handling the litigation. Mr. Parsil went on to tell me that "the response has been quite good" and that letters were "still coming in" and would probably continue to be received over the next two weeks.

I asked Mr. Parsil to send me copies of the correspondence. He replied that he would first check with Mr. Gumley, and if it were agreeable to Mr. Gumley he would sent me copies.

In the morning mail on February 19, 1975 I received at my office the correspondence which is attached hereto as Exhibit A. It consists of a cover letter from Mr. Parsil to me dated February 18, 1975 enclosing an undated letter from Irwin Gumley of Douglas L. Elliman & Co., Inc. which

formal party to these actions without prior consent and approval of this Court;

was sent to "the officers of apartment buildings where oil-fired boilers were used for heating."

Dated: New York, New York
February 21, 1975

Robert M. Osgood

Robert M. Osgood

Sworn to before me this
21st day of February, 1975

Alan Ihne

Notary Public

ALAN IHNE
Notary Public, State of New York
Residing in Kings County
Kings Co. Clk's No. 24-7011350
Certificate Filed in
New York Co. Clk's
Commission Expires March 30, 1976

U.S.D.J.

Exhibit A—Letter

JA 119

Douglas L. Elliman & Co.
INC.

REAL ESTATE

INSURANCE

ESTABLISHED 1911

575 MADISON AVENUE
NEW YORK, N. Y. 10022
371-2000

CABLE ADDRESS "DOUGELLMAN"

February 18, 1975

Mr. Robert Osgood
c/o Sullivan & Cromwell
48 Wall Street
New York, N.Y. 10005

Re: 580 Park Avenue, Inc.

Dear Mr. Osgood:

In reply to your telephone call on Friday, February 14, 1975, enclosed herewith please find copy of letter sent to the officers of apartment buildings where oil-fired boilers are in use for heating.

Trusting this is the information you desire.

Very truly yours,

DOUGLAS L. ELLIMAN & CO., INC.,
Agent

Stanley M. Parsil per lg

Stanley M. Parsil
Vice President

SMP:lg
Enc.

ALL INFORMATION FURNISHED REGARDING PROPERTY FOR SALE, RENTAL OR FINANCING IS FROM SOURCES DEEMED RELIABLE. NO REPRESENTATION IS M AS TO THE ACCURACY THEREOF AND IT IS SUBMITTED SUBJECT TO ERRORS, OMISSIONS, CHANGE OF PRICE, RENTAL OR OTHER CONDITIONS, PRIOR S. LEASE OR FINANCING, OR WITHDRAWAL WITHOUT NOTICE.

Douglas L. Wellman & Co.
INC.
ESTABLISHED 1919
575 MADISON AVENUE
NEW YORK, N. Y. 10022
371-2000
CABLE ADDRESS "DOUGELLMAN"

REAL ESTATE

INSURANCE

As you may be aware, there is a considerable body of opinion which holds that fuel oil and electric fuel adjustment billings have been excessive and illegal.

A lawsuit has been brought by the Lefrak Organization against the major oil companies, and joining in this suit have been the interests held by Mr. Harry Helmsley, the New York City Housing Authority, as well as many individual owners and co-operative corporations.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Wien, Lane & Malkin has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

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It is believed that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

We are bringing this matter to your attention so that you may decide whether, or not, you wish to join in this action. In the event you do make such a decision, we will be pleased to furnish, to the attorneys, all related information as to consumption, prices and billing on your behalf so as to establish your claim.

The Administrator of your building will be in contact with you to determine your decision.

Very truly yours,

DOUGLAS L. ELLIMAN & CO., INC.

Irwin Gumley
Senior Vice President

ALL INFORMATION FURNISHED REGARDING PROPERTY FOR SALE, RENTAL OR FINANCING IS FROM SOURCES DEEMED RELIABLE. NO REPRESENTATION IS MADE AS TO THE ACCURACY THEREOF AND IT IS SUBMITTED SUBJECT TO ERRORS, OMISSIONS, CHANGE OF PRICE, RENTAL OR OTHER CONDITIONS, PRIOR SALE, LEASE OR FINANCING, OR WITHDRAWAL WITHOUT NOTICE.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants	:	Civil Action No. 75-C-135 (M.A.C.)

DAVID BERGER, P. A.'S VERIFIED MOTION TO DISSOLVE THE TEMPORARY RESTRAINING ORDER DATED FEBRUARY 21, 1975, STRIKE EXXON'S MOTION, AND FOR ADDITIONAL RELIEF

Plaintiffs' Counsel, David Berger, P. A. (referred to as the "Berger firm"), pursuant to Federal Rule of Civil Procedure 65(b), hereby moves to dissolve this Court's Temporary Restraining Order, to strike Exxon's motion, and for other

relief set forth below, on the grounds that defendant Exxon, the moving party for the Temporary Restraining Order, has:

(a) Violated Rule 65(b) by not clearly showing from specified facts, by affidavit or otherwise, that immediate and irreparable injury, loss or damage will result before the adverse party, here the Berger firm, could be heard in opposition;

(b) Violated Rule 65(b) by failing to certify to the Court, in writing, the efforts, if any, which had been made to give the notice and the reasons supporting its claim that notice should not be required;

(c) Violated Rule 65(b) and due process by having intentionally failed and refused to give the Berger firm notice with the intent of unfairly and wrongfully appearing before the Court in order to obtain a temporary restraining order intended to embarass plaintiffs' counsel and injure its reputation before this Court;

(d) Violated Rule 65(c) by failing to give security or even request that security be set by the Court.

Movant requests the entry of an Order dissolving the Temporary Restraining Order, striking Exxon's Motion, declaring it null and void, ab initio, and imposing sanctions upon

counsel for Exxon, the firm of Sullivan & Cromwell, and their counsel of record, Robert MacCrate and Robert M. Osgood.

In support of the foregoing, the Berger firm avers the following: 1/

1. The Affidavit of Frederick S. Newman ("Newman"), counsel for ARAMCO in the above actions, admits that he had known since February 11, 1975 of the letter from Sulzberger-Rolfe, Inc. dated February 6, 1975, and that on February 12, 1975 Newman was advised by Mr. Norman Buchbinder that to obtain further information, Newman might call William Lippman, Esquire, of the firm of Wien, Lane and Malkin, whose name appears in the Sulzberger-Rolfe letter. Newman did not do so, nor did Newman contact the Berger firm.

2. The Affidavit of Robert M. Osgood ("Osgood"), counsel for Exxon, admits that he had known of the letters of Douglas L. Elliman & Co. ("Elliman") since 4:00 p.m. February 14, 1975. Mr. Osgood further states that he had received the letter of Elliman in the "morning mail of February 19, 1975". Osgood did not contact the Wien firm, nor the Berger firm, prior to the afternoon of February 21, 1975 as set forth in paragraph 6 below.

1/ This motion specifically is limited to Exxon, Sullivan & Cromwell, MacCrate and Osgoods' violation of Rule 65(b) and (c), and improper conduct. It does not address itself to any of the facts at issue with respect to Exxon's allegations.

3. On Thursday, February 20, 1975, after MacCrate and Osgood had received all correspondence attached as Exhibit B to their affidavits, an argument was held before this Court on ARAMCO's motion to dismiss in the Lefrak case. Counsel for ARAMCO was Frederick S. Newman, the Newman referred to in Paragraph 1, and an affiant in Support of Exxon's Motion. Messrs. MacCrate and Osgood were absent from the Courtroom, but Kenneth M. Bialo ("Bialo"), another counsel for Exxon, employed by Sullivan & Cromwell, whose name appears on Exxon's Memorandum in Support of its Proposed Order to Show Cause, was present in the Courtroom.

4. At this time, apart from arguing the motion against Newman, Stanley R. Wolfe ("Wolfe"), counsel for plaintiffs and a member of the Berger firm, had a personal conversation with Newman prior to the argument. In addition, Wolfe approached Bialo after the argument and hand delivered two letters to him relating to the New York City Housing Authority and the Lefrak cases respectively; they engaged in a conversation in the Courtroom and continued this conversation until they left the Courthouse and crossed the street, where they stood and talked for approximately 5 minutes. At no time on February 20, 1975, did Messrs. Bialo or Newman mention to Wolfe the motion before the Court or even raise the issues to attempt to obtain a response and/or explanation from the Berger firm of the two letters attached to Exxon's motion, notwithstanding the fact that at least Newman knew of the letter of Sulzberger-Rolve, and, most likely, Bialo of both.

5. On Friday, February 21, 1975, when MacCrate, Osgood and Sullivan & Cromwell knew that they were going to file Exxon's motion, they did not call the Berger firm prior to moving before the Court and obtaining an ex parte temporary restraining order in this matter.

6. Not until 1:40 p.m. on Friday did Osgood call to inform Wolfe that a temporary restraining order had been entered with respect to "soliciting clients", and that a messenger was to be on the 1:30 p.m. Metroliner to deliver the papers. Osgood refused to discuss the matter in any greater detail and did not inform Wolfe of the basis for the Temporary Restraining Order or of the allegations set forth in the defendant's moving papers.

7. Immediately thereafter Wolfe spoke to the Court's Clerk, George Gollum, Esquire, to learn "what this was all about". Mr. Gollum informed Wolfe in rough outline of the nature of the pleadings. At that time, Wolfe requested to speak to the Court. Mr. Gollum then received a phone call from the Judge and advised the Court, in summary, that Mr. Berger was out of the country, that the Berger firm had no prior notice of these proceedings, and that the Berger firm requested that the Temporary Restraining Order be vacated. Mr. Gollum then advised that the Court had decided to do so, and requested that an order be prepared by the Berger firm, setting down this matter for a hearing on a preliminary injunction.

8. Wolfe then called Osgood and informed him of the Court's decision and told him that the Berger firm was preparing the

requested Order and would deliver a copy on Monday. Osgood did not give Wolfe any notice that Osgood would attempt to see the Court personally that afternoon. Thus, after speaking with Osgood, Wolfe thought the matter was resolved, at least until Monday when both parties could have been heard after the Berger firm had received and reviewed Exxon's papers.

8. In addition, later during the afternoon, Osgood called saying that their messenger had missed the 1:30 p.m. Metroliner and would be on the regular 2:00 p.m. train. In fact, Exxon's papers were not delivered to the Berger firm until after 4:15 on Friday afternoon.

9. Subsequent to Wolfe's last telephone conversation with Osgood, Osgood and MacCrate, again without notice to Wolfe, went to the Court and held another ex parte conference with the Court. Wolfe learned of this second conference only upon receiving a call from Mr. Gollum. Wolfe then requested to speak to the Court directly. Wolfe was permitted only to respond to MacCrate's and Osgood's new arguments through his intuition, since the Court again had already decided to enter a modified Temporary Restraining Order against the Berger firm, again upon Exxon's ex parte representations to the Court.

10. By this time, it was approximately 5:00 p.m. on Friday afternoon. However, during the interim Wolfe had called the Wien firm and given them notice of the Temporary Restraining Order and its dissolution. The Wien firm, prior to Wolfe's call, was completely unaware of Exxon's motion since Exxon did not give the Wien firm notice. As a result of Wolfe's call to Wien, the Wien firm agreed to advise anyone who asked them, as counsel, not to send any mailings with respect to the above litigation.

11. In light of the foregoing, it is plain that no injury would have resulted from Exxon's having given fair notice to the Berger firm and the Court on Friday, February 21, 1975 in accordance with Rule 65(b) and having requested a conference for Monday, February 24, 1975, at which time the Berger firm would have been given an opportunity to be heard as required by Rule 65(b).

12. In addition, Exxon's conduct and papers are totally defective in that their papers fail to meet the requirements of Rule 65(b) and (c) as follows:

A. Exxon has not clearly shown from specified facts, by affidavit or otherwise, that immediate and irreparable injury , loss or damage will result before the adverse party, here the Berger firm, could be heard in opposition.

B. Exxon has failed to certify to the Court, in writing, the efforts, if any, which had been made to give the notice and the reasons supporting its claim that notice should not be required;

C. Exxon violated Rule 65(b) and due process by having intentionally failed and refused to give the Berger firm notice with the intent of unfairly and wrongfully appearing before the Court in order to obtain a temporary restraining order intended to embarass plaintiffs' counsel and injure its reputation before this Court;

D. Exxon completely and totally failed to give security or even request that security be set by the Court.

14. As a result of the wrongful conduct of Sullivan & Cromwell, MacCrate and Osgood, David Berger, P. A. and the members of that firm of record in this case have been injured and the firm itself has incurred substantial costs in time and resources to prepare this motion and defend itself against Exxon and its counsels' performance in this matter.

15. The above facts require that sanctions be imposed upon Exxon, Sullivan & Cromwell, MacCrate and Osgood, in a manner and ammount sufficient and appropriate in light of the above facts.

WHEREFORE, David Berger, P. A. respectfully requests this Court to enter an Order:

1. Dissolving the Temporary Restraining Order presently of record against David Berger, P. A. and its associated counsel;

2. Striking from the record Exxon's motion and supporting paper;

3. Imposing appropriate sanctions against Sullivan & Cromwell, Robert MacCrate and Robert M. Osgood; and

4. Granting such additional relief as is appropriate in connection herewith.

Stanley R Wolfe

DAVID BERGER
STANLEY R. WOLFE

Counsel in the above actions

Of Counsel:

David Berger, P. A.

Attorneys at Law

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

SAMUEL J. LEFRAK, et al., :

Plaintiffs : Civil Action No. 74-C-1700 (M.A.C.)

-against- :

ARABIAN AMERICAN OIL COMPANY, et al., :

Defendants :

----------x

NEW YORK CITY HOUSING AUTHORITY, :

Plaintiff : Civil Action No. 75-C-15 (M.A.C.)

-against- :

ARABIAN AMERICAN OIL COMPANY, et al., :

Defendants :

----------x

ROCHDALE VILLAGE, INC., :

Plaintiff : Civil Action No. 75-C-15 (M.A.C.)

-against- :

ARABIAN AMERICAN OIL COMPANY, et al., :

Defendants :

----------x

United States Courthouse
Brooklyn, New York

February 24, 1975

Before:

HONORABLE MARK A. CONSTANTINO, U.S.D.J.

MICHAEL MIELE,
OFFICIAL COURT REPORTER

APPEARANCES:

DAVID BERGER, ESQ.
1622 Locust Street
Philadelphia, Pennsylvania

BY: STANLEY R. WOLFE, ESQ.,
of Counsel

MR. WOLFE: We spoke about 5:00 o'clock on Friday, as you recall. Over the week-end we prepared a motion to dissolve the temporary restraining order, strike Exxon's motion and for additional relief against Exxon.

In connection with their violation of Rule 65-B, having nothing to do with merits of their claim against us in terms of the allegations --

THE COURT: Strictly a collateral issue on whether or not you have acted illegally in soliciting business.

MR. WOLFE: Our motion to strike right now has nothing to do with the collateral issue. We continue that Exxon has violated Rule 65-B and C and therefore it must be stricken as a rule of law.

All I am here for today, is that under Rule 65-B, that rule provides after the granting of a TRO, which you granted Friday afternoon at 5:00 o'clock, the rule says, on two day's notice to the party who obtained the TRO without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event, the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

We have prepared an order for your Honor's consideration, which lists a hearing date for our motion to dissolve and strike Exxon's motion in addition to which it provides for service upon Sullivan and Cromwell today and it also requests, and this is the only part that is more than a calendar request, that the existing temporary restraining order and pleadings in this matter shall be sealed by the Clerk until further order of the Court.

THE COURT: You don't read it as a restraining order that I signed. You read it as an order to go into the collateral issues as to whether or not you had solicited business improperly and adjourned the offer to the 60 agreement with you on the telephone. That's all I read it as. I don't think it comes under the technical rule of 65.

MR. WOLFE: It restrains us from talking to people.

THE COURT: Yes, to people who have received a circular with a fee schedule. You promised on the phone that anyone who came in with regard to those circulars, you could take them as clients but not set up an appointment until after the hearing.

MR. WOLFE: I don't believe that is right.

THE COURT: Do you mean to say you didn't say

that to me on the phone? When I spoke to you on the phone, didn't I say, as long as you say you will not talk to anyone who comes in from the date of this order with reference to any of those circulars, has nothing to do with anyone you represented prior to that time until the 6th of March.

MR. WOLFE: That's correct. I don't misrepresent what I said knowingly to anyone, certainly not to this Court. The way I read that order, we can read it together --

THE COURT: I know the intentions. I know both sides read orders differently.

MR. WOLFE: We believe Exxon violated the rules. Sullivan & Cromwell, this is sanctioned against Sullivan & Cromwell and Mr. MacCrate and Mr. Oscar. I verified this after. I don't want --

THE COURT: I will put it all on for Thursday morning.

MR. WOLFE: I explained to you on Friday that Mr. Berger, the person directly involved in this, is in Israel.

THE COURT: Right, you didn't want to do anything without him because his integrity was being impugned.

MR. WOLFE: He's going to be in Israel until

the week-end unless I call him. Are you going to to entertain our motion or --

THE COURT: I intend to hear everything on Thursday morning.

MR. WOLFE: I take it I am now moving with a request for a hearing under 65-B and I take it that you are denying my request.

THE COURT: Thursday morning, we will have a hearing on 65-B. At that time we will decide.

MR. WOLFE: This is an order setting a hearing time.

THE COURT: I don't need an order for that. I am telling you at 10:00 o'clock you will have a hearing.

MR. WOLFE: I would like to advise Mr. MacCrate and I will serve these papers on him today. Now, my other question is, whether you will agree sealing the record of this entire matter as of today until further disposition --

THE COURT: I don't see anything in that record to be sealed.

MR. WOLFE: Mr. MacCrate has papers that he has filed. He has alleged we have been soliciting clients.

THE COURT: He merely alleges the circular and

the fee schedule. Your offers did it.

MR. WOLFE: Mr. MacCrate must have talked to you in advance.

THE COURT: Never. Nor did he have an appointment with me. I am tired of this business of innuendoes. He never spoke to me.

MR. WOLFE: He did on Friday.

THE COURT: He did not, he spoke with regard to the order to show cause in front of my Clerk, the same as you're doing. When you get that way, you don't come into my chambers anymore.

MR. WOLFE: I would like to say this, --

THE COURT: You have Thursday morning to bring in your papers and Thursday morning, I will take up the entire issue. Violations of Sec. 65 and everything else

MR. WOLFE: I know we have no knowledge that Mr. MacCrate was coming to see you on Friday.

THE COURT: It was an ex parte order. Any lawyer has that right.

MR. WOLFE: We can argue this but if you look at 65-B 2, I can show you they had to certify to you that they tried to give us notice and they didn't.

THE COURT: I don't believe that this proceeding comes under that section.

MR. WOLFE: I thank you for the consideration and time. 11:00 o'clock on Thursday?

THE COURT: 11:00 o'clock.

MR. WOLFE: Could we go over the record for a second.

THE COURT: No. Once I start getting this kind of business in my court, you're never off the record. There will be a stenographer with me everytime you talk to me.

MR. WOLFE: I think you misunderstood what I said. May I clarify what you understood me to say Friday?

THE COURT: Mr. Wolfe, say it on Thursday. Say it to me on Thursday.

MR. WOLFE: Your Honor --

THE COURT: Mr. Wolfe, come in on Thursday.

MR. WOLFE: I have a personal request, from Mr. Berger who may arrive on Wednesday and I am sure he would want to be here on Thursday. If we can have it a little later in the morning, it would be easier for me.

THE COURT: Make it at 11:00 o'clock.

MR. WOLFE: Thank you very much, your Honor.

THE COURT: This is not a denial of the application, this is to have all parties present when the application is being made. All right.

Notice of Motion of Texaco Inc. Joining in the Motion of Exxon Corporation to Prohibit Plaintiffs' Counsel from Soliciting Clients and Stirring Up Litigation and to Disqualify Plaintiffs' Counsel, Dated February 25, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	Civil Action No. 75-C-135 (M.A.C.)
	MOTION AND NOTICE OF MOTION

S I R S:

PLEASE TAKE NOTICE that defendant Texaco Inc. hereby joins in the Order to Show Cause, previously brought on by defendant Exxon Corporation, and scheduled for hearing before Honorable Mark A. Costantino on March 3, 1975, in the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, why an order should not be entered:

1. Enjoining

(i) David Berger, P.A. and counsel associated with David Berger, P.A. or otherwise representing any plaintiff in these actions,

(ii) the plaintiffs in these actions, and

(iii) all other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise,

from stirring up claims against defendant Texaco Inc., soliciting clients and communicating directly or indirectly, orally or in writing, with any potential plaintiff not a formal party to these actions without prior consent and approval of this Court.,

2. Disqualifying David Berger, P.A. from further prosecuting claims against defendant Texaco Inc. in these cases;

3. Granting such further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that in the interests of judicial economy defendant Texaco Inc. hereby joins in the Memorandum of Law and Affidavits submitted by defendant Exxon in support of said Order to Show Cause, but Texaco Inc.

reserves the right to file such reply papers on its own behalf as may be appropriate.

Dated: New York, New York
February 25, 1975

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER
425 Park Avenue
New York, New York 10022
(212) PL 9-8400

CHARLES F. KAZLAUSKAS, JR.
135 East 42nd Street
New York, New York 10017

By _____
Charles F. Kazlauskas, Jr.

Attorneys for Defendant
Texaco Inc.

TO: DAVID BERGER, P.A.
1622 Locust Street
Philadelphia, Pennsylvania 19103

RICHARD S. LEFRAK, ESQ.
97-77 Queens Boulevard
Forest Hills, New York 11375

SULLIVAN & CROMWELL
48 Wall Street
New York, New York 10005

WHITE & CASE
14 Wall Street
New York, New York 10005

LORD, DAY & LORD
25 Broadway
New York, New York

DONOVAN, LEISURE, NEWTON
& IRVINE
30 Rockefeller Plaza
New York, New York 10020

WICKLES, RIDDELL, BLOOMER,
JACOBI & MC GUIRE
59 Maiden Lane
New York, New York 10038

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-15[illegible] (M.A.C.) NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of ANTHONY S. GENOVESE, sworn to February 26, 1975, the Lawyer's Code of Professional Responsibility and the New York Judiciary Law, the undersigned will move this Court before the Honorable Mark A. Costantino, on March 3, 1975 at 2:30 p.m. or as soon thereafter as counsel can be heard, at the United States Courthouse, 225 Cadman Plaza East,

Brooklyn, New York for an order enjoining David Berger, P. A. from soliciting potential intervening plaintiffs and disqualifying David Berger, P. A. and all counsel associated with that firm from prosecuting the above-captioned actions.

Dated: February 26, 1975
New York, New York

Yours, etc.

KISSAM & HALPIN

By: _____

A Member of the Firm
Attorneys for Defendant
Gulf Oil Corporation
120 Broadway
New York, New York 10005
(212) 962-2000

To:

David Berger, P. A.
1622 Locust Street
Philadelphia, Pennsylvania 19103

Richard S. Lefrak, Esq.
97-77 Queens Blvd.
Forest Hills, New York 11375

Edward W. Norton, Esq.
General Counsel
New York City Housing Authority
250 Broadway
New York, New York 10007

Attorneys for Plaintiffs.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-135 (M.A.C.) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ANTHONY S. GENOVESE, being duly sworn, deposes and says:

1. I am a member of the firm of Kissam & Halpin, attorneys for defendant Gulf Oil Corporation (Gulf).

2. I submit this affidavit in support of Gulf's motion for an order enjoining the firm of David Berger, P. A. from soliciting prospective intervening plaintiffs and to disqualify David Berger, P. A. and all counsel associated with it from further participation in these actions.

3. On February 21, 1975 defendant Exxon Corporation moved by Order to Show Cause for the identical relief sought herein. In support of its motion Exxon filed affidavits by Frederic S. Newman and Robert M. Osgood together with a memorandum of law. For the convenience of the Court and in an effort to avoid duplication, Gulf hereby adopts the supporting papers of defendant Exxon. Gulf respectfully reserves the right to submit a separate reply memorandum should one be necessitated by Plaintiff's papers in opposition.

Anthony S. Genovese

Sworn to me before
this 26th day of
February, 1975.

Patricia A. Roberts
Notary Public

PATRICIA A. ROBERTS
Notary Public, State of New York
No. 31-3597250
Qualified in New York County
Commission Expires March 30, 1976

TO:

DAVID BERGER, P.A.
1622 Locust Street
Philadelphia, Pennsylvania 19103

and

RICHARD S. LEFRAK, ESQ.
97-77 Queens Boulevard
Forest Hills, New York 11375

and

EDWARD W. NORTON, ESQ.
250 Broadway
New York, NY 10007

Attorneys for Plaintiffs

SULLIVAN & CROMWELL
Attorneys for Defendant
Exxon Corporation
48 Wall Street
New York, New York 10005

DONOVAN, LEISURE, NEWTON & IRVINE
Attorneys for Defendant
Mobil Oil Corporation
30 Rockefeller Plaza
New York, New York 10020

LORD, DAY & LORD
Attorneys for Defendant
Standard Oil Company of California
25 Broadway
New York, New York 10004

WHITE & CASE
Attorneys for Defendant
Arabian-American Oil Company
14 Wall Street
New York, New York 10005

CHARLES F. KAZLAUSKAS, JR., ESQ.
Attorney for Defendant
Texaco Inc.
135 East 42nd Street
New York, New York 10017

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
Attorneys for Defendant
Texaco Oil Co.
425 Park Avenue
New York, New York 10022

CRAVATH, SWAINE & MOORE
Attorneys for Defendant
Asiatic Petroleum Corporation
1 Chase Manhattan Plaza
New York. New York 10005

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-135 (M.A.C.)
	:	AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT MacCRATE, being duly sworn, deposes and says:

1. This affidavit is submitted in answer to the papers filed in its own behalf by the firm of David Berger, P.A. on February 24, 1975 and in further support of defendant Exxon Corporation's motion

(1) to enjoin the stirring up of claims against it and the solicitation of clients by David Berger, P.A. and those acting in concert with that firm, and

(2) to disqualify David Berger, P.A. from prosecuting claims against Exxon in these cases.

2. The instant proceeding brought in three actions is of an extraordinary character "touching upon vital concerns of the legal profession and the public's interest in the scrupulous administration of justice" (478 F.2d 562, 564).

3. The proceeding is based upon the Court's inherent power to do whatever may be necessary to protect its jurisdiction from champertous cases and to supervise the conduct of attorneys appearing before it. The papers submitted by the firm of David Berger, P.A. totally disregard the unusual nature of the proceeding. This is not a proceeding by a party for preliminary private relief such as is normally regulated by F.R.C.P. 65. It is rather a proceeding to protect the judicial process itself.

4. The attack upon the Court and upon counsel for Exxon in the papers submitted by David Berger, P.A. is completely without merit and should not be permitted to obscure either the seriousness of the solicitation demonstrated in the moving papers nor the cautious and circumspect manner in which the application was dealt with by the Court.

5. In acting upon the defendant's application relating to attorneys with no office in the State*, the Court was scrupulous to tailor its interim order to only what the situation absolutely required. The interim order was strictly confined to requiring plaintiffs' counsel to keep a list of communications with potential plaintiffs as of the date of the order and to prohibiting counsel from initiating such communications.

6. The Court, as the Berger papers concede, manifested its willingness to dispense with an interim order if none were necessary. It was only after the Court initiated a long distance telephone call to the Berger firm in Philadelphia, which I was invited to audit, and personally discussed the matter with Mr. Wolfe of that firm that the terms of the interim order were settled to regulate the conduct of counsel until the hearing of the motion. Moreover, the date for the hearing was specifically linked by the Court to Mr. Berger's personal availability as explained to the Court by Mr. Wolfe. At the same time, with similar consideration for plaintiffs' counsel, the Court denied defendant's request to take depositions prior to the return date of the order to show cause.

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* The requirements of local Rule 3(c) have been ignored by plaintiffs' counsel. Despite its requirement that only "an attorney or proctor of this court may enter appearances for parties, sign stipulations or receive payments upon judgments, decrees or orders", David Berger, without application for admission and with no office in New York State, has assumed in each case all the functions of an attorney admitted to the Bar of this Court. In the Samuel J. Lefrak case and the New York City Housing Authority case, while an attorney from within the State is listed as co-counsel, the complaint and all other court papers have been signed only by David Berger or by another lawyer in the Berger firm. In the Rochdale Village case, Rule 3(c) has been completely disregarded. The complaint is signed only by David Berger and no attorney from within the State is even listed as co-counsel.

7. Prior to the time of the Court's telephone call to Mr. Wolfe on the afternoon of February 21, 1975, all of the moving papers had been hand delivered to Mr. Wolfe in Philadelphia, and he was fully apprised of their allegations and the relief being sought.

8. The Court in settling the interim order following its telephonic conversation with Mr. Wolfe scrupulously limited the order to prospective client contacts and expressly advised Mr. Wolfe that the order was being so drawn.

9. In such circumstances to accuse the Court and defendant's counsel of impropriety borders on irresponsibility.

10. The affidavits and exhibits submitted in support of the Exxon application demonstrate that improper solicitation was in active progress and that Exxon was being subjected to continuing injury by the ongoing efforts to stir up additional claims against it. By whatever standard the moving papers are tested, they fully support the Court's action. The papers before the Court indicate that as many as one hundred additional plaintiffs were being solicited at the time of the application through the Sulzberger-Rolfe and Douglas L. Elliman firms alone. We do not yet know how many similar campaigns have been in progress. Mr. Gumley of Douglas L. Elliman & Co. said that responses from the solicitation were "still coming in" and would continue over the next two weeks. (Osgood afft. at 2) All of this lent substance and immediacy to the prediction made to the Court in January by plaintiff's counsel that "a substantial number of additional plaintiffs", including cooperatives were going to be brought in by counsel. (Transcript 1/10/75, p.

28). Just as soon as the papers supporting defendant's application were completed I sought an appointment with the Court to determine the procedure to be followed in view of the absence of plaintiffs' counsel from the State. By hand delivery messenger and by telephone the application was brought to the attention of plaintiffs' counsel as promptly as possible and the terms of the interim order, against which plaintiffs' counsel inveigh, were settled only after plaintiffs' counsel communicated with the Court and the Court with plaintiffs' counsel.

11. The interim order of which the Berger firm complains was settled with the full knowledge of Mr. Wolfe. Its terms are fully supported by the documented facts set forth in the supporting papers. The Berger firm in its papers of February 24, 1975 has in no way questioned the authenticity of the documentary record upon which defendant's application was based.

WHEREFORE, it is respectfully submitted that the cross-motion of the Berger firm made on its own behalf on February 24, 1975 should be denied in all respects and that for the reasons set forth in defendant's moving papers the Court should enter an order enjoining the solicitation of clients by the Berger firm and those acting in concert with it and disqualifying the Berger firm from prosecuting claims against Exxon in these three cases.

Robert MacCrate

Subscribed and sworn to
before me this 28th day
of February 1975.

IRENE K. MENTEL
Notary Public, State of New York
Residing in Queens County
Queens Co. Cl's No. 41 [illegible]
Certificate Filed in
New York Co. Cl's
Commission Expires March 30, 1976

Notice of Motion of Arabian American Oil Company Joining in the Motion of Exxon Corporation to Prohibit Plaintiffs' Counsel from Soliciting Clients and Stirring Up Litigation and to Disqualify Plaintiffs' Counsel, Dated February 28, 1975

JA 152

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -

SAMUEL J. LEFRAK, et al.,

Plaintiffs,

-against- : Civil Action No. 74-C-1700 (M.A.C.)

ARABIAN AMERICAN OIL COMPANY, et al., :

Defendants. :

- -x

NEW YORK CITY HOUSING AUTHORITY, :

Plaintiff, :

-against- : Civil Action No. 75-C-15 (M.A.C.)

ARABIAN AMERICAN OIL COMPANY, et al., :

Defendants. :

- -x

ROCHDALE VILLAGE, INC., :

Plaintiff, : Civil Action No. 75-C-135 (M.A.C.)

-against- :

ARABIAN AMERICAN OIL COMPANY, et al., : MOTION AND NOTICE OF MOTION

Defendants. :

- -x

S I R S:

PLEASE TAKE NOTICE that defendant Arabian American Oil Company ("Aramco") hereby joins in the Order to Show Cause, previously brought on by defendant Exxon Corporation, and scheduled for hearing before Honorable Mark A. Costantino on March 3, 1975, in the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, why an order should not be entered:

1. Enjoining

(i) David Berger, P.A. and counsel associated with David Berger, P.A. or otherwise representing any plaintiff in these actions,

(ii) the plaintiffs in these actions, and

(iii) all other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise,

from stirring up claims against defendant Aramco, soliciting clients and communicating directly or indirectly, orally or in writing, with any potential plaintiff not a formal party to these actions without prior consent and approval of this Court;

2. Disqualifying David Berger, P.A. from further prosecuting claims against defendant Aramco in these cases;

3. Granting such further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that in the interests of judicial economy defendant Aramco hereby joins in the Memorandum of Law and Affidavits submitted by defendant Exxon in support of said Order to Show Cause, but Aramco reserves

the right to file such reply papers on its own behalf as may be appropriate.

Dated: New York, New York
February 28, 1975

WHITE & CASE

By _____
A Member of the Firm
Attorneys for Defendant
Arabian American Oil Company
14 Wall Street
New York, New York 10005

TO:

DAVID BERGER, P.A.
Attorneys for Plaintiffs
1622 Locust Street
Philadelphia, Pennsylvania 19103

SULLIVAN & CROMWELL
Attorneys for Defendant
Exxon Corporation
48 Wall Street
New York, New York 10005

DONOVAN LEISURE NEWTON & IRVINE
Attorneys for Defendant
Mobil Oil Corporation
30 Rockefeller Plaza
New York, New York 10020

CHARLES F. KAZLAUSKAS, JR.
Attorney for Defendant
Texaco, Inc.
135 East 42nd Street
New York, New York 1001[illegible]

CRAVATH SWAINE & MOORE
Attorneys for Defendant
Asiatic Petroleum Corporation
One Chase Manhattan Plaza
New York, New York 10005

KISSAM & HALPIN
Attorneys for Defendant
Gulf Oil Corporation
120 Broadway
New York, New York 10005

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-135 (M.A.C.)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

IRWIN GUMLEY, being duly sworn, deposes and says:

1. I am a Vice President of Douglas L. Elliman & Co., Inc.

2. John F. Hamlin, the President of Douglas L. Elliman & Co., Inc., directed me to send a letter to the directors of the residential cooperatives we manage advising them of pending antitrust litigation against the oil companies. In accordance with his instructions, I sent such a letter. The form of letter is attached to this affidavit as exhibit "A".

3. I did not discuss the letter or its contents with David Berger or William J. Lippman or anyone associated with their law firms before the letter was sent, and I did not ask their permission to refer to them in the letter. I have never had any communication of any kind with Mr. Berger or his firm. After the letter was sent, however, I had several conversations with Mr. Lippman in which I asked him for additional information.

Irwin Gumley

Sworn to before me this

28 day of February, 1975.

MURRAY PUDIT
Notary Public, State of New York
No. 21 [illegible] Cert. in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 1976

Notary Public

Douglas L. Elliman & Co.
INC.
ESTABLISHED 1911

REAL ESTATE

INSURANCE

575 MADISON AVENUE
NEW YORK, N. Y. 10022
371-2000

CABLE ADDRESS "DOUGELLMAN"

As you may be aware, there is a considerable body of opinion which holds that fuel oil and electric fuel adjustment billings have been excessive and illegal.

A lawsuit has been brought by the Lefrak Organization against the major oil companies, and joining in this suit have been the interests held by Mr. Harry Helmsley, the New York City Housing Authority, as well as many individual owners and co-operative corporations.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Wien, Lane & Malkin has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

ALL INFORMATION FURNISHED REGARDING PROPERTY FOR SALE, RENTAL OR FINANCING IS FROM SOURCES DEEMED RELIABLE. NO REPRESENTATION IS MADE AS TO THE ACCURACY THEREOF AND IT IS SUBMITTED SUBJECT TO ERRORS, OMISSIONS, CHANGE OF PRICE, RENTAL OR OTHER CONDITIONS, PRIOR SALE, LEASE OR FINANCING, OR WITHDRAWAL WITHOUT NOTICE.

It is believed that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

We are bringing this matter to your attention so that you may decide whether, or not, you wish to join in this action. In the event you do make such a decision, we will be pleased to furnish, to the attorneys, all related information as to consumption, prices and billing on your behalf so as to establish your claim.

The Administrator of your building will be in contact with you to determine your decision.

Very truly yours,

DOUGLAS L. ELLIMAN & CO. INC.

Irwin Gumley
Senior Vice President

ALL INFORMATION FURNISHED REGARDING PROPERTY FOR SALE, RENTAL OR FINANCING IS FROM SOURCES DEEMED RELIABLE. NO REPRESENTATION IS MADE AS TO THE ACCURACY THEREOF AND IT IS SUBMITTED SUBJECT TO ERRORS, OMISSIONS, CHANGE OF PRICE, RENTAL OR OTHER CONDITIONS, PRIOR SALE, LEASE OR FINANCING, OR WITHDRAWAL WITHOUT NOTICE.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs,	:	
-against-	:	Civil Action No. 74-C-1700 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	
NEW YORK CITY HOUSING AUTHORITY, Plaintiff,	:	
-against-	:	Civil Action No. 75-C-15 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	
ROCHDALE VILLAGE, INC., Plaintiff,	:	
-against-	:	Civil Action No. 75-C-135 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN F. HAMLIN, being duly sworn, deposes and says:

1. I am the President of Douglas L. Elliman & Co., Inc., a New York corporation having its principal office at 575 Madison Avenue, New York, New York. The corporation has

business since 1911 and manages 92 cooperative apartment houses.

2. All property owners in New York have become increasingly concerned over the unanticipated and unprecedented increases in the cost of fuel and utilities, which have more than doubled in the last 18 months. The problem has been especially acute for cooperatives, many of which have been compelled to increase their maintenance charges or levy special assessments against their tenant-shareholders several times during the last year.

3. We are required as managing agent to prepare annually for each cooperative board of directors a projection of estimated operating expenses for the ensuing year. These projections are customarily submitted to the boards in the Fall so that the annual budgets can be formally adopted before January 1st and the tenant-shareholders advised of any change in maintenance charges for the new year.

4. In the Fall of 1974, the problem of constantly escalating fuel and utility costs was a source of great concern to all boards of cooperative apartment houses. I had read newspaper articles of antitrust lawsuits brought against the oil companies by the Lefrak Organization and the New York City Housing Authority.

5. During one of my conversations with William Jay Lippman, who has acted as special counsel to my company from time to time, we discussed the subject of this litigation. He gave me general information as to the status of the lawsuits

and I asked him to give me a written summary.

6. After receiving Mr. Lippman's letter I decided I had an obligation to ask the boards of directors of all the cooperative apartment houses we manage whether or not they wished to join the litigation and I, therefore, requested Irwin Gumley, Senior Vice President of the company, to send a form letter containing the appropriate information.

7. At no time did I discuss with Mr. Lippman or Mr. Berger or anyone associated with their law firms, the letter which Mr. Gumley sent, and I did not ask their permission to refer to them or their firms in the letter. In fact, I have had no contact of any kind with Mr. Berger or anyone employed by his firm.

8. I have never been requested nor has anyone employed by Douglas L. Elliman & Co., Inc. been requested to recommend any lawyer to any of our principals, nor has any lawyer tried to have me recommend his employment, in connection with this litigation.

JOHN F. HAMLIN

Sworn to before me this

28 day of February 1975.

Notary Public

PATRICIA GUY
Notary Public, State of New York
No. G[redacted]4600434
Qualified in Bronx County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs,	:	
-against-	:	Civil Action No. 74-C-1700 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	
NEW YORK CITY HOUSING AUTHORITY, Plaintiff,	:	
-against-	:	Civil Action No. 75-C-15 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	
ROCHDALE VILLAGE, INC., Plaintiff,	:	
-against-	:	Civil Action No. 75-C-135 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

WILLIAM JAY LIPPMAN, being duly sworn, deposes and says:

1. I am an attorney, and a member of the law firm of Wien, Lane & Malkin with offices at 60 East 42nd Street, New York, New York.

2. Since 1969, I have acted as counsel to Sulzberger-Rolfe, Inc. and to its President, Edward Sulzberger. Sulzberger-Rolfe, Inc. is a New York corporation having its principal office at 654 Madison Avenue, New York, New York. It is engaged in the real estate brokerage business and acts as managing agent for the owners of many commercial and residential properties, including cooperative apartment houses. Mr. Sulzberger, in addition to his activities as President of Sulzberger-Rolfe, Inc., is an investor in real estate for his own account. He has, for many years, been one of the leaders of the real estate industry in New York City and is the President of the Metropolitan Fair Rent Committee which, among other things, acts as a liaison between real estate owners and the City of New York in matters relating to the administration of the rent control laws.

3. I have also acted as special counsel to Douglas L. Elliman & Co., Inc. from time to time since 1968 and have worked with that firm on a number of real estate transactions since 1960. The company is also a real estate brokerage firm in the City of New York and acts as managing agent for commercial and residential properties, including over 90 cooperative apartment houses.

4. In January, 1975, Mr. Sulzberger asked me during a telephone conversation whether I was familiar with the details of the antitrust lawsuit brought against the oil companies by the Lefrak Organization and whether I knew David Berger. I replied that I did not know Mr. Berger personally, but only by reputation and that although my firm was acting as associate counsel to Mr. Berger on behalf of one of our other clients, I personally had only very general knowledge about the litigation which I understood involved, among other things, a claim for treble damages for

violation of the Federal Antitrust laws.

5. Mr. Sulzberger further inquired whether the lawsuit was a class action and I advised him that it was not. He requested that I write him a letter summarizing the nature of the litigation and the retainer arrangement which Mr. Berger might make with a party desiring to become a plaintiff. At this time he mentioned that in July 1974 he had received a letter from the Berger firm as a result of a telephone conversation with one of its associates when he requested a letter concerning the litigation and the fee arrangement contemplated for plaintiffs desiring to join the litigation and be represented by Mr. Berger.

6. Mr. Sulzberger telephoned me again after receiving my letter, a copy of which is attached as Exhibit A, and told me that he felt his company was obligated to advise the property owners for whom it acts as managing agent, that antitrust litigation was pending and that they should consider commencing their own actions.

7. Subsequently, I received in the mail a copy of a form letter dated February 6, 1975, signed by Norman Buchbinder, a copy of which is attached to the motion papers of Sullivan and Cromwell. I did not see the letter before it was mailed, and did not know its contents, nor was the sending of any such letter discussed with me by Edward Sulzberger or by Norman Buchbinder or by anyone else in their office, before or after it was sent. I did not authorize the use in the letter of my name, the name of my firm, or Mr. Berger's name, nor did I furnish any form of retainer agreement on Mr. Berger's letterhead or otherwise.

8. In January 1975, John F. Hamlin, the President of Douglas L. Elliman & Co., Inc., also telephoned me to ask about

the Lefrak lawsuit against the oil companies, and I gave him the same information I had previously furnished to Mr. Sulzberger. Mr. Hamlin, too, requested, and I wrote to him, a letter summarizing the status of the litigation, a copy of which letter is attached as Exhibit B.

9. Thereafter, I received a copy of a form letter signed by Irwin Gumley, an officer of Douglas L. Elliman & Co., Inc. I did not see the letter before it was mailed and did not know its contents, nor was the sending of any such letter discussed with me by Mr. Hamlin or Mr. Gumley or anyone else in their office, before or after it was sent. I did not authorize the use in the letter of my name, the name of my firm, or Mr. Berger's name. After Mr. Gumley, as agent, sent this letter to his principals, he telephoned me several times asking for information about the lawsuit, which information I gave him.

10. I do not know to whom either the Sulzberger-Rolfe, Inc. letter or the Douglas L. Elliman & Co., Inc. letter was sent, and to my knowledge, I have had neither oral nor written communication with anyone to whom they may have been sent.

William Jay Lippman

WILLIAM JAY LIPPMAN

Sworn to before me this

25th day of February, 1975.

Marie Cognata

Notary Public

Exhibit A—Letter

JA 166

January 10, 1975

Mr. Edward Sulzberger
Sulzberger-Rolfe, Inc.
654 Madison Avenue
New York, N. Y. 10021

Re: Lefrak Organization, Inc. v.
Arabiam American Oil Company, et al

Dear Ed:

You have requested information concerning the lawsuit brought by the Lefrak Organization against the major oil compa[illegible]s.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Our firm has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

We believe that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

I will be pleased to answer any additional questions that you may have.

Sincerely,

William Jay Lippman

WJL:mgc

January 22, 1975

Mr. John F. Hamlin
Douglas L. Elliman & Co., Inc.
575 Madison Avenue
New York, N. Y. 10022

Dear Jack:

You have requested information concerning the lawsuit brought by the Lefrak Organization against the major oil companies.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Our firm has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

We believe that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

I will be pleased to answer any additional questions that you may have.

Sincerely,

William Jay Lippman

WJL:mgc

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	Civil Action No. 75-C-135 (M.A.C.)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

NORMAN BUCHBINDER, being duly sworn, deposes and says:

1. I am the Secretary of Sulzberger-Rolfe, Inc. and supervise the Management Department of that company.

2. I was instructed by Edward Sulzberger, the President of Sulzberger-Rolfe, Inc. to send to the boards of directors of the cooperative apartment houses which we manage a letter containing information about pending anti-trust litigation against the oil companies.

3. Although the letter mentions the names of William Jay Lippman, his law firm, Wien, Lane & Malkin, and David Berger, and has attached an unsigned fee agreement form, I never showed the letter and attachment to them, or anyone associated with them before it was sent, nor did I discuss the contents with them or request their permission to use their names. I have had no communication, oral or written, with Mr. Lippman or Mr. Berger, or their firms, on this subject.

Norman Buchbinder

NORMAN BUCHBINDER

Sworn to before me this

[illegible] day of [illegible], 1975.

Notary Public

[illegible]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al. Defendants	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-135 (M.A.C.)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

EDWARD SULZBERGER, being duly sworn, deposes and says:

1. I am the President of Sulzberger-Rolfe, Inc., a New York corporation having its principal office at 654 Madison Avenue, New York, New York. The corporation and its predecessor companies have been engaged in the real estate brokerage business in New York

City since 1905 and manages over 150 residential and commercial buildings in New York City, including 25 cooperative apartment houses.

2. As part of our duties as managing agents for cooperatives we are required to submit annually to each board of directors a projection of estimated operating expenses for the ensuing year of operation. The boards rely upon our projections in determining the maintenance charges payable by their tenant-shareholders. They also expect us to submit to them promptly any information we receive from time to time which affects the value of their buildings and the individual cooperative apartments.

3. Near the end of July 1974, I first learned of this litigation from Richard Lefrak, a joint venturer with me in a major real estate project in New York City. Richard, during a telephone conversation, told me that The Lefrak Organization, Inc. had filed a lawsuit against the oil cartel for price fixing and causing the rise in the price of home heating oil and utilities which affected my interests and those of my principals. When I expressed interest in finding out more about the litigation, Richard said he would contact David Berger and ask Berger to give me a ring. Shortly thereafter, I received a call from a Mr. Wolfe who identified himself as a member of the Berger firm and mentioned that Richard Lefrak had talked to him about my interest in learning more about the litigation. Mr. Wolfe had a conversation with me during which he described the litigation, its current status and the arrangements which related to retention of counsel for entry into and representation in the litigation. I asked him to drop me a letter setting forth this information in

more detail. Shortly after my conversation with Mr. Wolfe, I received a letter, a copy of which is attached hereto as Exhibit A. This letter was in direct response to my conversation with Mr. Wolfe and, as indicated, enclosed an unsigned fee agreement form which outlined the cost and fee arrangements related to this litigation. Believing that the case was a class action, I took no further steps with respect to the Berger firm and since that date have had no contact with the firm, Mr. Berger nor Mr. Wolfe.

4. Throughout the Fall of 1974, all operating expenses, and especially the cost of fuel and utilities, continued to increase and many of the cooperative boards of directors were compelled to impose special assessments on their tenant-shareholders to pay operating deficiencies brought about by these cost increases. At the same time, the market prices of cooperative apartments being offered for resale were dropping, in large part because of the continuing increases in maintenance charges payable by tenant-shareholders to meet increased costs of operation.

5. In early January 1975, I learned from a newspaper article that the New York City Housing Authority had commenced an action against the defendants; and I also was aware that Consolidated Edison Company of New York had started a separate lawsuit. Therefore, I inquired of my attorney, William Jay Lippman, of the law firm of Wien, Lane & Malkin, whether these lawsuits were class actions. When he told me they were not, I felt I had an obligation to inform all property owners for whom we act as managing agent, and particularly the cooperative boards, of that fact, and to recommend to them that they consider commencing their own lawsuits against the oil companies. I requested Mr. Lippman to write to me,

summarizing the status of the litigation and the retainer arrangement which might be made with Mr. Berger, if our principals wanted to commence litigation.

6. After receiving Mr. Lippman's letter, a copy of which is attached as Exhibit B, I instructed Norman Buchbinder, an officer of my firm, to write to the boards of directors of all the cooperative apartment houses we manage, apprising them of this litigation and their opportunity to join it and enclosing the fee agreement form attached to Mr. Wolfe's letter to me dated July 31, 1974. Mr. Buchbinder's letter was dated February 6, 1975.

7. I did not show the letter to Mr. Lippman or Mr. Berger, or anyone associated with their law firms before it was distributed nor did I consult with them concerning its contents, or request their permission to refer to them or their firms in the letter.

8. No lawyer has requested me or anyone employed by Sulzberger-Rolfe, Inc. to recommend any lawyer to any of my principals, nor did any lawyer seek to or influence me to recommend his employment in connection with this litigation.

Edward Sulzberger
EDWARD SULZBERGER

Sworn to before me this
25th day of January, 1975.

Madeline A. Hinds
Notary Public

MADELINE A. HINDS
NOTARY PUBLIC, State of New York
No. 03-7907413-Qual. in Bronx Co.

Exhibit A—Letter

DAVID BERGER, P. A., ATTORNEYS AT LAW

1622 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19103

(215) 732-[illegible]00

DAVID BERGER
H. LADDIE MONTAGUE, JR.
WARREN D. MULLOY
LEONARD BARRACK
STANLEY R. WOLFE
GERALD J. RODOS
JOEL C. MEREDITH
DANIEL E. BACINE
MICHAEL K. SIMON
BRUCE K. COHEN
PAUL J. McMAHON
WARREN RUBIN
EDWARD H. RUBENSTONE
MERRILL G. DAVIDOFF
STEVEN J. GREENFOGEL

COUNSEL
ALEXANDER H. FREY
HAROLD BERGER

TELEX 834-309

July 31, 1974

Edward Sulzberger, Esquire
Sulzberger & Rolfe
654 Madison Avenue
New York, New York

RE: Lefrak Organization, Inc. v. Arabian-American Oil Company, et al

Dear Mr. Sulzberger:

It was a pleasure speaking with you yesterday. As I explained to you, the Lefrak action against the major oil companies alleges violations of Section 1 of the Sherman Act, Section 73 of the Wilson Tariff Act and Section 1 of the New York State Donnelly Act. The violations alleged encompass, but are not limited to, a conspiracy to reduce the supply of petroleum and petroleum products and to control and restrict imports of petroleum to the United States. The Complaint asks for millions of dollars in compensatory and punitive damages, as well as injunctive relief against any further illegal conduct.

The basic product involved in this lawsuit is heating oil used in connection with residential multiple dwellings. We have also been asked to institute additional actions with respect to commercial properties and hotels.

At your request, enclosed is an in-blank fee agreement which outlines the cost and fee arrangements being requested of all those interested in participating in this litigation.

Thank you very much.

Sincerely,

Stanley R Wolfe

Stanley R. Wolfe

SRW:dp
Enc.

DAVID BERGER, P. A., ATTORNEYS AT LAW

1622 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19103

(215) 732-8000

DAVID BERGER
H. LADDIE MONTAGUE, JR.
WARREN D. MULLOY
LEONARD BARRACK
STANLEY R. WOLFE
GERALD J. RODOS
JOEL C. MEREDITH
DANIEL E. BACINE
MICHAEL K. SIMON
BRUCE K. COHEN
PAUL J. McMAHON
WARREN RUBIN
EDWARD H. RUBENSTONE
MERRILL G. DAVIDOFF
STEVEN J. GREENFOGEL

COUNSEL
ALEXANDER H. FREY
HAROLD BERGER

TELEX 834-309

Re: Lefrak Organization, Inc. v.
Arabian-American Oil Company, et al.
74 Civ. 979

Pursuant to your request we agree to represent you as an intervenor plaintiff in the above litigation instituted on behalf of Lefrak Organization, Inc. against major oil defendants seeking, inter alia, treble and punitive damages for federal and state antitrust violations resulting from substantial overcharges for certain petroleum products and electric fuel adjustment billings.

We agree to render all legal services necessary for the representation of your claim for damages in the above litigation for which we and associate counsel, if any, shall be entitled to a contingent fee of 33-1/3% of the amount received by you from defendants in damages, either by way of settlement or verdict or otherwise (after deduction for out-of-pocket expenses for which we will be reimbursed as set forth below). In the event the Court awards a counsel fee to be paid by defendants as a separate item over and above any recovery for damages sustained by you, such counsel fee shall be retained by us.

In order initially to defray the expenses of the litigation, you agree to contribute a sum equal to $1 for each unit in your buildings involved in your claims (each apartment or rental unit being regarded as a unit for this purpose). These expenses of litigation will include but will not be limited to such items as filing fees, costs

of transcripts, duplication costs, long distance telephone calls, travel expenses, costs of depositions, computer services, expert services of economists, investigators, etc. We will keep you fully advised of these expenses from time to time as they are being incurred.

You will fully cooperate with us and furnish our lawyers and others working on this case with all necessary and appropriate information so that we may vigorously and properly represent your interests in this litigation.

Please be good enough to sign the copy of this letter for our files.

With all best wishes, I am,

Sincerely,

David Berger

DB/pw

Approved and Accepted:

_____ _____

Date

Exhibit B—Letter

JA 179

LAWRENCE A. WIEN
ALVIN D. LANE
PETER L. MALKIN
ALVIN SILVERMAN
FRED LINDEN
ROBERT J. WEISSMANN
WILLIAM JAY LIPPMAN
RALPH W. FELGTEN
STANLEY KATZMAN
MARTIN R. COWAN
JOHN L. LOEHR
MARTIN D. NEWMAN
C. MICHAEL SPERO
DONALD A. BETTEX
MELVYN H. HALPER
ROBERT A. MACHLEDER

WIEN, LANE & MALKIN

COUNSELLORS AT LAW

LINCOLN BUILDING
60 EAST 42ND STREET
NEW YORK, NEW YORK 10017

TELEPHONE: (212) 687-8700 • CABLE: LAWWIEN

RICHARD H. [illegible]
ALBERT J. WILSON
STEPHEN SCHLESSMAN
RICHARD A. SHASTID
GERALD LINHORN
MITCHELL J. NELSON
JEFFREY R. GALLIN
ALAN D. GORDON

January 10, 1975

Mr. Edward Sulzberger
Sulzberger-Rolfe, Inc.
654 Madison Avenue
New York, N. Y. 10021

Re: Lefrak Organization, Inc. v.
Arabiam America Oil Company, et al

Dear Ed:

You have requested information concerning the lawsuit brought by the Lefrak Organization against the major oil companies.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Our firm has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

We believe that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

I will be pleased to answer any additional questions that you may have.

Sincerely,

Bill

William Jay Lippman

WJL:mgc

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al Plaintiffs	:	Civil Action No. 74-C-1700 (M.A.C.)
v.	:	
ARABIAN AMERICAN OIL COMPANY, et al Defendants	:	
NEW YORK CITY HOUSING AUTHORITY Plaintiff	:	
v.	:	Civil Action No. 75-C-15 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al Defendants	:	
ROCHDALE VILLAGE, INC. Plaintiff	:	
v.	:	Civil Action No. 75-C-135 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al Defendants	:	

AFFIDAVIT OF DAVID BERGER

COMMONWEALTH OF PENNSYLVANIA	:	
	:	SS
COUNTY OF PHILADELPHIA	:	

David Berger, being duly sworn deposes and says that:

1. I am a senior member of the firm of David Berger, P.A., chief counsel of record for plaintiffs in the above actions and make this affidavit in opposition to Exxon's Motion for a Preliminary Injunction.

2. As chief counsel, I have received numerous inquiries from real estate enterprises in the New York Metropolitan area seeking information and/or representation of their interests in the litigation against the defendants herein.

3. My associate, Stanley R. Wolfe, also has had contact with clients who have retained us for the prosecution of this litigation and with potential clients often without my personal knowledge, but in exercising his authority to do so or at my specific request.

4. I do not know Messrs. Sulzberger, Buchbinder, Hamlin or Gumley and have never met with or talked to them. In connection with the facts alleged in the affidavits of Messrs. MacCrate, Osgood and Newman, I had no prior knowledge of the letter of Elliman nor Sulzberger-Rolfe attached thereto nor have I had any contact with either concern. Moreover, these letters had not been the subject of any consultation with this office. While the firm of Wien, Lane and Malkin forwarded a copy of the Sulzberger-Rolfe letter to me by letter dated February 11, 1975, I left my office on February 14, 1975 for a meeting of the International Academy of Trial Lawyers beginning in New York and continuing in Israel and Rome before receiving the letter and I had not seen the Wien

office letter until after my return to my office on February 28, 1975. I learned of the Exxon Motion allegations and the Elliman and Sulzberger-Rolfe letters only upon being awakened at 7:00 a.m. Tel Aviv time on Saturday, February 21, 1975 by a phone call from Stanley R. Wolfe, Esquire, who informed me of the Exxon Motion and the Court's disposition thereof.

5. I have always acted in accordance with the highest traditions of the legal profession in my thirty-seven (37) years of legal practice. My record as Chancellor of the Philadelphia Bar Association as well as my other activities for the improvement of the legal profession and the administration of justice will attest to this. As head of the Berger firm, I have repeatedly stressed the need for every member of the firm to act strictly in accordance with the highest ethical principles. The Berger firm has not violated and will not violate the Code of Professional Responsibility, the New York State Judiciary Law or any other responsibility to this Court or any Court - or client. I can only conclude that this is a desperate diversionary attempt by Exxon to set up a road-block to obstruct the expeditious administration of justice in this litigation and at the same time to deprive our clients of the counsel of their choice. I therefore respectfully ask this Honorable Court to dismiss Exxon's

Motion and to allow us to proceed with the merits of the litigation.

DAVID BERGER

SWORN TO AND SUBSCRIBED:

BEFORE ME THIS 2nd DAY:

OF March, 1975:

Notary Public

My Commission Expires:

MARIE R. RUSSO
Notary Public, [illegible] Co.
My Commission Expires June 13, 1977

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al	:	
Plaintiffs	:	
v.	:	Civil Action No. 74-C-1700 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al	:	
Defendants	:	
NEW YORK CITY HOUSING AUTHORITY	:	
Plaintiff	:	
v.	:	Civil Action No. 75-C-15 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al	:	
Defendants	:	
ROCHDALE VILLAGE, INC.	:	
Plaintiff	:	
v.	:	Civil Action No. 75-C-135 (M.A.C.)
ARABIAN AMERICAN OIL COMPANY, et al	:	
Defendants	:	

AFFIDAVIT OF STANLEY R. WOLFE

COMMONWEALTH OF PENNSYLVANIA	:	
	:	SS
COUNTY OF PHILADELPHIA	:	

STANLEY R. WOLFE, being duly sworn deposes and says that:

1. I am a member of the firm of David Berger, P.A., counsel of record for plaintiffs in the above actions and make this affidavit in opposition to Exxon's Motion for a Preliminary Injunction.

2. As counsel for the plaintiffs, I have been involved in the litigation since its inception.

3. From the date of the filing of the Complaint in the original Lefrak action on July 2, 1974, I believe that I have been the only member of David Berger, P.A., to have communicated with Sulzberger-Rolfe whose letter dated February 6, 1975 is attached as Exhibit "A" to the Affidavit of Fredric S. Newman and offered in support of Exxon's Motion.

4. In response to his inquiry concerning the litigation, on July 30, 1974, I had a telephone conversation with Edward Sulzberger of Sulzberger-Rolfe who, at that time, I believed to be an attorney. During this conversation, Mr. Sulzberger explained to me that his firm managed real estate as a management firm as well as owned property in its own right. He sought information concerning the nature of the litigation, fee arrangements, and what was required for his joining it and those whose property his organization managed. He requested that I further explain and confirm, in writing, the substance of our conversation.

5. In response to Mr. Sulzberger's request, the next day, July 31, 1974, I wrote to Mr. Sulzberger, a copy

of which correspondence is attached as Exhibit "A", confirming our conversation and describing the litigation and its scope. With this letter was forwarded the "in-blank Fee Agreement" attached to the Sulzberger-Rolfe letter which is Exhibit "A" to the Newman affidavi In my letter to Mr. Sulzberger, I wrote the following:

> "At your request, enclosed is an in-blank fee agreement which outlines the cost and fee arrangements being requested of all those interested in participating in this litigation."

This paragraph was a direct follow up of Mr. Sulzberger's request during our conversation of the prior day.

6. Since the letter of July 31, 1974, neither the Berger firm nor I had any further communication with Mr. Sulzberger or Sulzberger-Rolfe.

7. I have never spoken to and do not know Norman Buchbinder, identified in Fredric S. Newman's affidavit as an employee of Sulzberger-Rolfe.

8. My only other recollection of the firm of Sulzberger-Rolfe, Inc. is having been informed of the Sulzberger-Rolfe letter dated February 6, 1975 by a carbon copy of a letter from Wien, Lane and Malkin to David Berger dated February 11, 1975, but not received by me until Tuesday, February 18, 1975. A copy of this letter and attachment is attached hereto as Exhibit "B".

As the letter was addressed to Mr. Berger and he was away from the office on an extended trip to Israel and Rome, I took no action awaiting Mr. Berger's direction if he felt any was required.

9. I have had no contact with and could not identify Douglas L. Elliman & Co., Inc., a letter of whose is attached to the affidavit of Robert M. Osgood and to the best of my knowledge, information and belief this company has had no contact with David Berger, P.A., in connection with this litigation.

Stanley R. Wolfe
STANLEY R. WOLFE

SWORN TO AND SUBSCRIBED:
BEFORE ME THIS 3rd DAY:
OF March, 1975:

Marie R. Russo
Notary Public

My Commission Expires:

MARIE R. RUSSO
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 13, 1977

Exhibit A—Letter

JA 189

July 31, 1974

Edward Sulzberger, Esquire
Sulzberger & Wolfe
654 Madison Avenue
New York, New York

RE: Lefrak Organization, Inc. v. Arabian-American Oil Company, et al

Dear Mr. Sulzberger:

It was a pleasure speaking with you yesterday. As I explained to you, the Lefrak action against the major oil companies alleges violations of Section 1 of the Sherman Act, Section 73 of the Wilson Tariff Act and Section 1 of the New York State Donnelly Act. The violations alleged encompass, but are not limited to, a conspiracy to reduce the supply of petroleum and petroleum products and to control and restrict imports of petroleum to the United States. The Complaint asks for millions of dollars in compensatory and punitive damages, as well as injunctive relief against any further illegal conduct.

The basic product involved in this lawsuit is heating oil used in connection with residential multiple dwellings. We have also been asked to institute additional actions with respect to commercial properties and hotels.

At your request, enclosed is an in-blank fee agreement which outlines the cost and fee arrangements being made on behalf of all those interested in participating in this litigation.

Thank you very much.

Sincerely,

Stanley R. Wolfe

srw:dp
Enc.

EXHIBIT "A"

Exhibit B—Letter

JA 190

DONALD A. BETTEX
MARTIN B. COWAN
RALPH W. FELSTEN
MELVYN H. HALPER
STANLEY FATZMAN
ALVIN S. LANE
FRED LINDEN
WILLIAM JAY LIPPMAN
JOHN L. LOEHR
ROBERT A. MACHLEDER
PETER L. MALKIN
MARTIN D. NEWMAN
ALVIN SILVERMAN
C. MICHAEL SPERO
ROBERT I. WEISSMANN
LAWRENCE A. WIEN

WIEN, LANE & MALKIN
COUNSELLORS AT LAW
LINCOLN BUILDING
60 EAST 42ND STREET
NEW YORK, NEW YORK 10017
TELEPHONE: (212) 687-8700 • CABLE: LAWWIEN

RICHARD H. ABELSON
GERALD EINHORN
JEFFREY K. GALLIN
ALAN D. GORDON
MITCHELL J. NELSON
STEPHEN SCHLAKMAN
RICHARD A. SHAPIRO
ALBERT J. WILSON

February 11, 1975

David Berger, Esq.
David Berger, P. A.
1622 Locust Street
Philadelphia, Pennsylvania 19103

Re: Heating Oil Antitrust Litigation

Dear David:

Enclosed, for your information, is a copy of self-explanatory letter dated February 6, 1975 as distributed by our client, Sulzberger-Rolfe Inc. The retainer letter form distributed [illegible]he one we used prior to our recent decision to suggest the alternative, separate lawsuit. I doubt this will make for any difficulty. We now are waiting for returns on this and at least two other groups of possible litigants. We should have these results by February 21.

Cordially,

Ralph W. Felsten

RWF:ma
Enclosure
cc: Stanley R. Wolfe, Esq.
William Jay Lippman, Esq.

EXHIBIT "B"

SULZBERGER-ROLFE INC. REALTORS 654 MADISON AVENUE, NEW YORK, N.Y. 10021 • (212) 593-7600
WRITER'S DIRECT LINE 7654

February 6, 1975

ar Board President:

As you may have heard, a lawsuit has been brought by the Lefrak Organi-
tion against the major oil companies.

The suit is being prosecuted in the U.S. District Court for the Eastern
istrict of New York by David Berger, Esq. and seeks treble damages under
he Federal Anti-trust Act and damages for violation of the New York State's
nti-trust Law for claimed overcharges for fuel oil and electric fuel ad-
ustment billings. The case is not a class action and only those who join
he Lefrak Organization as plaintiffs will be entitled to share in the re-
overy. Mr. Berger is a highly qualified Philadelphia trial attorney who
eads a firm which limits its practice to anti-trust and securities litigation.

The firm of Wien, Lane & Malkin has been retained as associate counsel with
r. Berger on behalf of various residential property owners. The action is
eing limited to residential property claims.

Counsel fees will be on a contingent basis of one-third of any amount re-
overed by settlement or trial of the lawsuit. Any counsel fees awarded by
he court will be deducted from the one-third contingency fee. Intervening
arties are being asked to advance to Mr. Berger's firm the sum of $1.00
er apartment to be applied toward out-of-pocket expenses. Any unused portion
f the advances will be returned to the parties proportionately.

The Complaint asks for millions of dollars in compensatory and punitive
amages as well as injunctive relief against any further illegal conduct by
he oil companies. The basis product involved in the lawsuit is heating oil
sed in residential buildings.

Many Boards of Directors of co-operative buildings in New York have already
agreed to contribute $1.00 per unit in their buildings in return for receiv-
ing a proportion of the award which may be granted by the court.

I am enclosing an agreement drawn by Mr. Berger. I suggest that this agree-
ment be presented as soon as possible to your Board of Directors for possible
approval. If your Board approves, please return a signed copy of the agree-
ment to me and I will take the necessary steps to have your building represente

If you have any questions, I suggest you call William Lippman at Wien, Lane
and Malkin (687-8700).

Sincerely,
SULZBERGER-ROLFE INC.

William Buckley

DAVID BERGER, P. A., ATTORNEYS AT LAW

1622 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19103

(215) 732-8000

DAVID BERGER
H. LADDIE MONTAGUE, JR.
WARREN D. MULLOY
LEONARD BARRACK
STANLEY R. WOLFE
GERALD J. RODOS
JOEL C. MEREDITH
DANIEL E. BACINE
MICHAEL K. SIMON
BRUCE K. COHEN
PAUL J. McMAHON
WARREN RUBIN
EDWARD H. RUBENSTONE
MERRILL G. DAVIDOFF
STEVEN J. GREENFOGEL

COUNSEL
ALEXANDER H. FREY
HAROLD BERGER

TELEX 834-309

JA 192

Re: Lefrak Organization, Inc. v. Arabian-American Oil Company, et al.
74 Civ. 979

Pursuant to your request we agree to represent you as an intervenor plaintiff in the above litigation instituted on behalf of Lefrak Organization, Inc. against major oil defendants seeking, inter alia, treble and punitive damages for federal and state antitrust violations resulting from substantial overcharges for certain petroleum products and electric fuel adjustment billings.

We agree to render all legal services necessary for the representation of your claim for damages in the above litigation for which we and associate counsel, if any, shall be entitled to a contingent fee of 33-1/3% of the amount received by you from defendants in damages, either by way of settlement or verdict or otherwise (after deduction for out-of-pocket expenses for which we will be reimbursed as set forth below). In the event the Court awards a counsel fee to be paid by defendants as a separate item over and above any recovery for damages sustained by you, such counsel fee shall be retained by us.

In order initially to defray the expenses of the litigation, you agree to contribute a sum equal to $1 for each unit in your buildings involved in your claims (each apartment or rental unit being regarded as a unit for this purpose). These expenses of litigation will include but will not be limited to such items as filing fees, costs

of transcripts, duplication costs, long distance telephone calls, travel expenses, costs of depositions, computer services, expert services of economists, investigators, etc. We will keep you fully advised of these expenses from time to time as they are being incurred.

You will fully cooperate with us and furnish our lawyers and others working on this case with all necessary and appropriate information so that we may vigorously and properly represent your interests in this litigation.

Please be good enough to sign the copy of this letter for our files.

With all best wishes, I am,

Sincerely,

David Berger

DB/pw

Approved and Accepted:

_____ _____

Date

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et. al. Plaintiffs v. ARABIAN AMERICAN OIL COMPANY, et. al. Defendants	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY Plaintiff v. ARABIAN AMERICAN OIL COMPANY, et. al. Defendants	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC. Plaintiff v. ARABIAN AMERICAN OIL COMPANY, et. al. Defendants	Civil Action No. 75-C-135 (M.A.C.)

MEMORANDUM OF DAVID BERGER, P.A.
IN OPPOSITION TO EXXON'S MOTION
FOR A PRELIMINARY INJUNCTION

This matter is before the Court upon Exxon's ex parte request for a temporary restraining order and its request for a final order "disqualifying David Berger, P.A., (the "Berger firm") inter alia, from further prosecuting claims against defendant Exxon Corporation in these cases."

The alleged basis for this request for relief is a claim of unlawful and unethical solicitation of clients and stirring up claims against defendant Exxon.

As the Court now knows, Exxon first moved against the Berger firm in an ex parte request for a temporary restraining order. As the verified motion to strike of the Berger firm makes clear, the Berger firm had no knowledge of the motion prior to calling the Court on Friday and during that time had no knowledge of the facts relating to the letters of Sulzberger-Rolfe, Inc. and Douglas Elliman & Co., Inc., which provide the basis for Exxon's motion.

During the ten days since the Berger firm was served with Exxon's papers, the firm fully investigated all the facts touching these letters, their origin and distribution. These facts are set forth in the Affidavits of: (1) Stanley R. Wolfe and David Berger, Counsel herein from the Berger firm; (2) William Lippman, the attorney involved from the firm of Wein, Lane and Malkin; (3) Edward Sulzberger,

President of Sulzberger-Rolfe, Inc. and Norman Buchbinder, a Vice-President of that firm; and (4) John F. Hamlin, President of Douglas L. Elliman & Co., Inc. and Irwin Gumley, a Vice-President of that firm.

The Berger firm believes that had Exxon shown the professional courtesy of first inquiring of the Berger firm as to the facts, the events of the past ten days would have been avoided and the litigation moved forward towards trial.

The Facts

As the Affidavits make clear, the facts relating to these letters are indisputable and provide a simple, concise explanation for the origin and distribution of the letters offered in support of Exxon's contentions and plainly establish that Exxon's Motion is completely without foundation.

The essential facts are these:

1. Both Sulzberger-Rolfe Inc. and Douglas Elliman Co., Inc. are longstanding clients of the firm of Wien, Lane and Malkin. (Lippman Affidavit, ¶¶2 and 3)

2. In early January 1975 Mr. Sulzberger learned from newspapers of the existence of New York City Housing Authority oil antitrust litigation. Having also been aware

of the Con-Ed suit, Mr. Sulzberger called his attorney, Mr. William Jay Lippman, of the firm of Wien, Lane & Malkin to determine if any of these suits were class actions. When Mr. Lippman told him they were not, Mr. Sulzberger felt that he was obligated to inform his principals whose properties he managed that they should consider commencing their own lawsuits against the oil companies since no existing litigation was a class action. He requested Mr. Lippman to write him a letter summarizing the status of the litigation. (Lippman Affidavit, ¶5)

3. When Mr. Sulzberger received Mr. Lippman's letter, he had Mr. Buchbinder prepare a notice for his principals and attach an old "in-blank fee agreement" letter which Mr. Wolfe had sent to him in July 1974 (Sulzberger, ¶6). This document which was outdated and no longer accurate had come into Mr. Sulzberger's possession as a result of a request by Mr. Sulzberger in a telephone conversation in July with Stanley R. Wolfe, Esquire of the Berger firm.

4. Mr. Sulzberger had asked Mr. Wolfe for detailed information, in writing, concerning the litigation and fee arrangement. In response thereto, Mr. Wolfe then sent a letter to Mr. Sulzberger, a copy of which is attached as Exhibit "A" to both the Wolfe and Sulzberger Affidavits.

This letter explained the litigation and enclosed an in-blank fee agreement which outlined the cost and fee arrangements for participation in the litigation. It was unsigned and simply the most accurate way of providing Mr. Sulzberger with the information he requested (Wolfe Affidavit, ¶5).

5. After Mr. Wolfe wrote Mr. Sulzberger, the Berger firm and its members never heard from Mr. Sulzberger again and never had any further communication with him or his firm (Wolfe Affidavit, ¶6).

6. Neither Mr. Lippman nor the Berger firm knew that the Sulzberger letter was to be sent nor was any permission by either firm requested. Neither Mr. Lippman nor the Berger firm requested Mr. Sulzberger or his firm to recommend any lawyer as such to influence Mr. Sulzberger to recommend any lawyer (Sulzberger, ¶8) and Mr. Lippman himself never authorized the use of his name, his firm's name, or the Berger firm name (Lippman Affidavit, ¶7).

7. The facts surrounding the letter of Douglas L. Elliman & Co., Inc, are similar except that the Berger firm never had any communication with it of any kind.

(Wolfe Affidavit, ¶9, Berger Affidavit, ¶4, Hamlin Affidavit, ¶7)

8. The only relation between the Berger firm and Wien, Lane & Malkin is that Wien, Lane & Malkin is the general counsel for the Helmsley-Spear interests in New York and associate counsel in this litigation on behalf of Helmsley-Spear (Lippman Affidavit, ¶4)

9. Finally, the Berger firm first learned of the Elliman letter when it received Exxon's papers and of the Sulzberger-Rolfe letter after Mr. Berger left the country to attend a meeting of the International Academy of Trial Lawyers in Israel and Rome. (Berger Affidavit, ¶4 and Wolfe Affidavit, ¶8)

Discussion

Exxon has made wild, unsupported accusations that the Berger firm has solicited legal business and stirred up claims against Exxon. The only basis of the accusation is a letter circulated by Sulzberger-Rolfe Inc. and a letter circulated by Douglas Elliman Co., Inc. The facts in the Affidavits demonstrate that letters were entirely proper and that no person involved directly or indirectly with the

circulation of the letters violated the letter or spirit of either the American Bar Association Code of Professional Responsibility which has been adopted as the code of professional ethics by the New York State Bar or the New York Judiciary Law relating to the solicitation of legal business.

1. Sulzberger-Rolfe and Elliman Engaged In No Improper Conduct.

Both Sulzberger-Rolfe and Elliman are real estate managers representing cooperative owners of real estate in the New York City area. In this capacity, they function as agents to their client-principals and they have the right and they are under a fiduciary duty to disclose the information which they possessed relating to the antitrust litigation against Exxon.

Sulzberger-Rolfe and Elliman were not prohibited from performing any act attributable to them. They are not subject to the ABA-NY State Code of Professional Responsibility since they are not lawyers. Furthermore, they have done nothing in violation of the New York State Judiciary Law.*/ In fact, their challenged activities are specifically permitted under existing decisions of the New York Court of Appeals.

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*/ *Section 479 states:*
It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a
(Continued)

The leading case on the subject of solicitation of legal business in New York is People v. Schneider, 20 A.D. 2d 408, 247 N.Y.S. 2d 623 (1964). In that case, the defendant, Gale - an insurance broker - had made recurring recommendations of a lawyer to accident clients, arising out of pre-existing relationships with his clients. The New York Court of Appeals specifically declined to condemn such conduct.

> "...No canon and no penal statute condemns the recommendation of lawyers to persons in a personal, social or professional relationship, pre-existing the making of the recommendation and reasonably concerning matters referable to the relationship." at p. 626.

Judge (now Chief Judge) Breitel carefully distinguished recommendation based on personal relationships with clients from recommendation based upon prior arrangements to solicit between the lawyer and the layman recommending the lawyer or based upon actual or proposed compensation of referral.

As the New York Court of Appeals noted:

> "In this case Gale as an insurance broker sustained a relationship to his insurance clients. On the bare conversations recounted it cannot be said that he was not performing

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(Continued)

> *retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services, or to make it a business so to solicit or procure such business, retainers or agreements.*

> a function directly involved in the advising of these clients in an area not too remote from the subject matter of their relationship. Some were friends. All had been doing business with him for some time. Again, on the bare conversations recounted, it cannot be said that he was stirring up litigation or with design, systematically soliciting legal business for the lawyers, as distinguished from giving advice to his insurance clients. In short, there was no showing that he was an 'officious intermeddler', that he was abusing a pre-existing relationship, or that he was using the cover of his brokerage relationship to channel legal business to the lawyers." at page 626.

Schneider, supra, has been followed and approved in Kelly v. Greason, 23 N.Y. 2nd 368, 296 N.Y.S. 2nd 937 (1968). Plainly then, both Sulzberger-Rolfe and Elliman are within the scope of permissible conduct under New York law.

2. Wien, Lane and Malkin Engaged In No Improper Conduct.

Sulzberger-Rolfe and Elliman are both regular and longstanding clients of the Wien firm. This fact by itself is sufficient to dispel any possible inference of a violation of the New York Judiciary Law as interpreted by the New York Court of Appeals in People v. Schneider, supra and Kelly v. Greason, supra.

The application of the Cannons of Ethics and the Disciplinary Rules of the American Bar Association to the activities of Wien, Lane and Malkin is no different. The ABA disciplinary rules in substance prohibit a lawyer from

recommending, on an unsolicited basis, himself or an associate to a non-lawyer or voluntarily advising or suggesting that a non-lawyer should take legal action.*/

The Affidavits of Lippman, Sulzberger and Hamlin establish that both Sulzberger and Elliman, who had prior knowledge of the litigation, as noted, requested information from the Wien firm as to the status of the litigation, and

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*/ DR 2-103 Recommendation of Professional Employment.
(A) A lawyer shall not recommend employment as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.
(B) Except as permitted under DR 2-103 (C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client.
(C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate, except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.
(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates.

* * *

DR 2-104 Suggestion of Need of Legal Services.
(A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:
(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

that the Wien firm responded in serving its clients by providing the information requested. (See letter attached as Exhibit A to the Lippman Affidavit) In fact, what occurred is that Sulzberger and Elliman each then took Lippman's letter, without his knowledge, and incorporated it in their letters to their principals.

Summarizing the facts, the opinion letter was not solicited by Wien, did not constitute or intend employment of Wien, and was directed to a regular and long-standing client of the Wien firm.

Under these circumstances. it is, of course, absurd to suggest that the Wien firm violated any part of either DR 2-103 or DR 2-104. With respect to DR 2-103, first, the non-lawyer here sought advice, and hence the Wien firm was entitled to recommend itself, if it felt so inclined. Second, it did not recommend the employment of any person in this firm. Finally, the Wien firm did not recommend anyone.

With respect to DR 2-104, first, advice of the Wien firm was solicited. Second, even if Wien had volunteered such advice, it was dealing with a regular and long-standing client to whom the giving of unsolicited advice is expressly permitted. As Canons 2-3 and 2-4 make abundantly clear, the Wien firm was perfectly free to volunteer advice

and accept employment or other benefits when the advice was given to a regular client as was the case here.*/

3. The Berger Firm Engaged In No Improper Conduct.

If Sulzberger-Rolfe, Elliman and Wien did nothing improper, a fortiori and obviously, the Berger firm could not be imputed with an improper act among those completely legitimate acts of Sulzberger-Rolfe, Elliman and Wien. But even quite apart from the complete propriety of the acts of Sulzberger-Rolfe, Elliman and Wien, the affidavits establish

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*/ *EC 2-3 Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.*

EC 2-4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result. A lawyer who volunteers advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.

that the Berger firm knew nothing of the relationships, intentions and specific acts of these persons.

It is clear that the Berger firm had no knowledge of the intent of the parties to send the letters and no knowledge of the circulation of the Sulzberger letter until approximately ten days after it was mailed, and no knowledge at all of the Elliman letter. The Berger firm's only contact with either individual was a phone conversation in July with Sulzberger in which he requested a description of the antitrust litigation and fee arrangements in connection with joining the litigation. This information was supplied by Wolfe's letter to Sulzberger dated July 31, 1974, which described the litigation and enclosed an "in-blank" fee agreement which set forth the proposed attorney-client relations for participation in the litigation. The Berger firm has never had any contact with Elliman. In short, the Berger firm recommended nobody and suggested nothing to Sulzberger-Rolfe and Elliman.

What Exxon must be insinuating is that solicitation by the letter took place through an unsavory and unethical relationship between the Berger firm and the Wien firm. Again the Affidavits make it plain that the Berger firm had never even heard of Elliman and had only one contact with Sulzberger in July, 1974. Neither did the Wien

firm discuss these two Wien clients with the Berger firm. The Wien firm accepted no employment or other benefits from Sulzberger-Rolfe or Elliman or anybody in connection with this litigation.

Finally, it cannot be said that the Berger firm requested the Wien firm to recommend its employment to Sulzberger-Rolfe, who in turn were to recommend its employment to others unknown at the time. The Berger firm has had many communications with the Wien firm in connection with its representation of an important client of that firm in the oil litigation. At no time did it authorize or request that the Wien firm recommend it to another person and at no time did the Wien firm make such a suggestion. Moreover, it could hardly have asked the Wien firm to contact Sulzberger-Rolfe or Elliman, organizations whom it did not know were clients of the Wien firm. And no stretch of the imagination could conceive that the Wien practice, one of the largest and most highly reputed real estate practices in the country, in which Sulzberger-Rolfe and Elliman were important clients, was a "cover for directing legal business to a lawyer" like the Berger firm or any other. Schneider, supra.

4. The Record Requires Exxon's Request For Relief And Further Discovery Be Denied Summarily

As Kelly, supra, demonstrates, the letters on their face are completely insufficient to raise an inference of impropriety under New York law. For this reason, no prima facie case exists against the Berger firm. Under similar circumstances, it is clear that the New York State Courts would dismiss any charge of impropriety in a disciplinary proceeding. See Matter of Shufer, A.D. 2nd 208, 209 N.Y.S. 2nd 545 (1961); Matter of Marino, 20 N.Y. 2nd 176, 282 N.Y.S. 2nd 230 (1967); and Kelly v. Greason, supra. */

Notwithstanding the lack of a prima facie case and in the interest of disclosure and candor, the Berger firm has provided affidavits (revealing what otherwise would be confidential matters protected by the attorney-client privilege) which both negate even the hint of impropriety surrounding the letters and demonstrate the correctness of the conduct of the Wien firm and, of course,

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*/ *For example, in Marino, supra, the New York Court of Appeals held that the accusation of solicitation constituted a prima facie case in New York State when 104 clients in separate matters were referred and the referrals came from a small number of persons. In Kelly, supra, 36 such referrals were held to be insufficient. Here, solicitation was alleged to have taken place with reference to a single antitrust claim,*

the Berger firm. In view of these affidavits, not only does no prima facie case or probable cause exist to suspect an impropriety, but there is now no factual basis to support the charge at all. Accordingly, no basis for further inquiry into these matters in gross breach of the attorney-client privilege should be permitted.

In addition to infringement of the attorney-client privilege, Exxon's request that any party be banned from communication with others, and the imposition of an order banning any person from communicating with potential claimants in the law suit would constitute a violation of the First Amendment. See Rogers and Turner v. United States Steel Corp., et al., No. 74-1815 (3rd Cir. 2/21/75); United Transportation Union v. State Bar, 401 U.S. 576, 91 S.Ct. 1076 (1971); NAACP v. Butten, 371 U.S. 415, 83 S.Ct. 328(1963).

Finally, the matters before the court today have no relation to and no bearing upon any pending lawsuit by any plaintiff represented by the Berger firm, against Exxon. Moreover, nothing presently before the court permits any inferences about the attorney and client relations in these cases. Thus, Exxon's request for any relief in these cases is patently invalid on its face.

CONCLUSION

Based upon the facts contained in the affidavits and the indisputable principles relevant herein, David Berger

P.A. respectfully submits that Exxon's Motion must be denied and the Order of the Court vacated.

David Berger
Stanley R. Wolfe
Daniel Berger
DAVID BERGER, P.A.,
ATTORNEYS AT LAW
1622 Locust Street
Philadelphia, PA 19103

Dated: March 3, 1975

Attorneys for Plaintiffs

and

Wien, Lane & Malkin

By: _____

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

S. J. LEFRAK, et al.,

-against-

ARABIAN AMERICAN OIL CO., et al.,

Defendants.

----------x

74-C-1700

United States Courthouse
Brooklyn, New York

March 3, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

DAVID BERGER, ESQ.
STANLEY R. WOLFE, ESQ.
RICHARD A. SPRAGUE, ESQ.
JEROME EDELMAN, ESQ.
Attorneys for Plaintiff

MESSRS. SULLIVAN & CROMWELL
Attorneys for Defendant Exxon

BY: ROBERT MC CRATE, ESQ.
ROBERT OSGOOD, ESQ.
KENNETH BIALO, ESQ.

MESSRS. KISSAM & HALPIN
Attorneys for Defendant Gulf Oil Corporation

BY: ANTHONY S. GENOVESE, ESQ.
JOEL H. BLUMKIN, ESQ.

MESSRS. WHITE & CASE
Attorneys for Defendant Arabian-American Oil Company

BY: FREDERIC S. NEWMAN, ESQ.
E. MILES PRENTICE, ESQ.

MESSRS. CRAVATH, SWAINE & MOORE
Attorneys for Defendant Asiatic Petroleum

BY: W. FILLMORE WOOD, JR., ESQ.
Of Counsel

CHARLES F. KAZLAUSKAS, JR.,
G. KENNETH HANLEY, ESQ.
Attorneys for Defendant Texaco Inc.

Appearances (cont.):

MESSRS. DONOVAN LEISURE NEWTON & IRVINE
Attorneys for Defendant Mobil Oil

BY: JAMES A. MAGEE, ESQ.
Of Counsel

MESSRS. KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

BY: MILTON J. SCHUBIN, ESQ.

MESSRS. LORD, DAY & LORD
Attorneys for Standard Oil Company of Californi

BY: GORDON SPIVACK, ESQ.
Of Counsel

MESSRS. SIDLEY & AUSTIN
BY: DICK FLYNN, ESQ.

THE CLERK: Lefrak against Arabian-American Oil Company, et al.

MR. EDELMAN: Your Honor, before we begin, may I for the record state that my name is Jerome Edelman of the firm of Edelman, Berger, Peters and Koshell, 16 Court St., Brooklyn, New York.

I have been retained of counsel for all three plaintiffs in the three civil actions and also of counsel to the firm of David Berger.

My participation will come later after Mr. Sprague, who I am introducing at this time, Mr. Richard Sprague, who will appear and will argue in behalf or against the motion.

MR. MC CRATE: I appear on behalf of Defendant Exxon Corporation.

If your Honor please, we appear before you today in support of the motion to enjoin solicitation and to disqualify plaintiff's counsel without the aid of discovery and having received answering papers only a few hours ago towards the end of this morning. But these answering papers raise very significant further questions which can only be resolved by depositions and the production of documents.

A situation is presented to your Honor that

protestations of piety cannot cure. We only see the tip of a broad ranging project to gather plaintiffs.

We have continued our investigation during the past week and at the end of the week we found additional use of what we now know to be the Lippman form of letter touting the Berger firm, asserting the likelihood of settlement, and describing the Wien firm as associate counsel in this litigation.

We served this morning a second Osgood affidavit, we served it on the plaintiffs' attorneys at the Wien firm where we understood they were, just as soon as this information was gathered and recorded in affidavit form.

We are concerned here today with professional conduct of both the Berger firm and the Wien firm, working together. It commenced in July of 1974 when Richard Lefrak, we are told, suggested to the Berger firm that it call Sulzberger, Wolfe. As a result of that call, Mr. Wolfe, for the Berger firm, called and sent a blank fee agreement to Mr. Sulzberger. Meanwhile, the Berger firm pursued, I submit, the tactic of gathering intervenors.

On August 2, 1974 there were filed two motions to intervene in the Lefrak organization case, 74-C-979 which has since been dismissed, on behalf of Carroll

Management Company and Woods Management Company.

Later in the same month, around August 30, four more motions to intervene were filed in the Lefrak case on behalf of Glenwood Management Corp., Pickman Brokerage, Inc., Hillside Associates, Forest Hills South, Inc.

In all, six prospective intervenors claimed to speak for 18,750 apartment units.

In September 1974 the defendants' responses to these motions to intervene were indefinitely postponed and when the Lefrak case was dismissed on January 10th the motions to intervene were deemed withdrawn. Nevertheless, at the pretrial hearing before your Honor on October 10, 1974 plaintiffs' counsel again raised the spectre of massive interventions in these words: "I can now represent that the Helmsley-Spear interests in New York will be intervening in this litigation. He is one of the largest real estate owners in the city."

Now, notwithstanding that representation, on the 10th of October, 1974 no motions for further intervention were made in the Lefrak organization case. However, on January 10, Mr. Wolfe returned to predict interventions and he asserted on the record before your Honor that there would be a

substantial number of additional plaintiffs. They were going to bring in cooperatives, among others.

From this recital, I submit it is clear that there was a gathering of additional plaintiffs going on over a period of more than six months as an integral part of the strategy of this litigation, right from the very outset.

Now, against this background we find Mr. Lippman of the Wien firm on January 10, the same date, sending to Sulzberger, Wolfe, a form letter. That form letter was repeated to Douglas Elliman on January 22. Again we now understand, and this is the subject of our most recent submission to date, that the same letter went on January 13th to Brown, Harris, Stevens, and we find what appears to be a mutilated copy of that letter turning up in the files of Ashford, and this, too, is a subject of the latest Osgood affidavit.

You will see, your Honor, that the bottom of the document disappears. What it is, as set forth in the Osgood affidavit, is a letter addressed to Frank Karelson, Sr., Esq., Karelson, Karelson, Lawrence and Nathan, 230 Park Avenue, New York, New York, 10017.

"Dear Mr. Karelson:" -- and there is set out

there a substantial portion of the letter that Mr. Lippman sent to Douglas Elliman on the 22nd of January and to Mr. Grotto of Brown, Harris on the 13th of January, and to Mr. Sulzberger on the 10th of January.

Now, the covering letter of Mr. Karelson, with which this was sent to Mr. Adams Ashforth is simply this:

"We are recommending that the enclosed letter be circulated to all our cooperatives. It could amount to a sizable piece of change. You will be hearing more on this shortly."

Now, we are asked to conclude, your Honor, that no one in the Berger firm or the Wien firm knew or in any way was responsible for the use that has been made of the blank fee agreement that was sent out by Mr. Wolfe in July of 1974, or for this form of letter to Mr. Sulzberger, to Douglas Elliman and to Brown, Harris that has become a circular letter in the real estate trade today, to all appearances being sent out by various management companies with the very words in it that were drafted by Mr. Lippman, touting the Berger firm and explaining all the arrangements upon which one might enter.

Nothing was done, not one thing was done to

halt in any way this ongoing solicitation until we came before your Honor to seek protection.

You will note in the Lippman affidavit that there was an acknowledgment that after Mr. Lippman knew what was being sent out by Douglas Elliman he was phoned several times, he says, asking -- and asked for information. And there is not any indication that he in any way protested the content of what was then being circularized in this fashion.

And note particularly a highly significant letter of January 11, 1975, in this past month, from Mr. Felston of the Wien firm to David Berger, and it encloses the Sulzberger, Wolfe circular letter. What it said in that letter is this: "Our recent decision..." -- this is a "Dear David" letter -- "...our recent decision to suggest the alternative separate lawsuit..." -- then also in that letter there is a statement, "Now we are waiting for the return..." and a further statement, "...at least two other groups of possible litigants are in anticipation..." -- I assume.

This was just a month after Mr. Wolfe's prediction that he would have a substantial number of additional plaintiff cooperatives, and this is how they were going about getting them.

Your Honor, we must have discovery. There is much to be told still about this story. What is this relation between the Wien firm and the Berger firm?

Now, we are told that the only relation between the Berger firm and the Wien, Lane and Malcolm firm is that the Wien, Lane and Malcolm firm is the general counsel for Helmsley-Spear interests in New York and associate counsel in this litigation on behalf of Helmsley-Spear. We know that Helmsley-Spear has yet to appear in any of these three actions, or in the action that has been dismissed. Nonetheless in this circular letter that is going the rounds of the real estate business in New York, you have a representation that associate counsel in this litigation to the Berger firm is Wien, Lane and Malcolm.

Now, in addition to that, we find that there is information in the Douglas Elliman letter that does not appear in the letter that was sent to Douglas Elliman by Mr. Lippman. There must have been additional conversations to furnish this information with respect to who were the parties involved in the litigation, and the representations as to what was going on.

There was, in addition, the representation

in Mr. Lippman's letter about the matter of settlement. Just what do we have here but a virus that is extending out and it is all going to come back with the disease to this Court unless appropriate remedies are taken.

THE COURT: Have they received any clients because of what you are talking about? So far as you know --

MR. MC CRATE: Your Honor, this is why we need discovery. This is precisely the kind of information.

THE COURT: If they stood up and said to the Court, "We have not received any clients in regard to any of the circulars, No. 1, and, No. 2, we have no knowledge -- No. 1, we have no knowledge, and, No. 2, we have not received clients," would there be any need or any reason for discovery under those circumstances?

MR. MC CRATE: There would indeed, your Honor, because the whole basis --

THE COURT: If there is no effect to the letter, if it has not served its purpose, it sure can't be detrimental, nor can it be violative of any law or rule.

I permitted you to talk for a long time and I didn't want everybody to think I was sitting up

yawning -- I wasn't, I was thinking.

MR. MC CRATE: I appreciate that, your Honor. I would suggest that a statement that "We don't know whether or not any of our clients have come to us as a result of this circularization or what may have been an earlier circularization of which we have no knowledge" be made.

Now, your Honor, the fact --

THE COURT: The first dismissal was because of the fact, as you know, that they instituted the action on the basis of Lefrak itself, and the Court made it quite clear at the time of all the arguments that Lefrak had no privy whatsoever with any of the corporations which were purchasing the oil, nor with any of the corporations delivering the oil.

You remember that?

MR. MC CRATE: Indeed I do.

THE COURT: I said under those circumstances this Court was barren of jurisdiction, completely barren because it was an improper plaintiff. It was like getting a judgment that was worthless. I don't take pride in worthless judgments, if there was going to be a judgment. So therefore they went out and decided, well, we have individual corporations that made these purchases, representing

each individual housing project --

MR. MC CRATE: Of the Lefrak organization.

THE COURT: In addition to that, we have the City Housing Authority which becomes a plaintiff in a separate action, but joined in now because it is still the same claim.

You wouldn't want to say that your letter had any influence upon the City Housing Authority coming in to the federal court?

MR. MC CRATE: Certainly not a Sulzberger letter --

THE COURT: On a fee basis, especially. I don't know what they pay, but I don't think they pay too much.

(continued next page)

MR MC CRATE: Certainly not on the basis of a letter sent to Sulzberger; what we don't know is what went to the City Housing Authority at the same time, and we have here --

THE COURT: We could find that out immediately if City Housing is here. If they are here I will ask them the question: Did you ever receive a letter? If they say no I will take their word for it. I don't need a long deposition for that, Mr. McCrate, you know that. I don't believe in --

MR. MC CRATE: They --

THE COURT: I don't believe in idle questions or idle talk, neither one. I don't believe in that in this Court at all.

MR. MC CRATE: You have letters going out on the 10th of January after the statement to you, "We are going to get additional plaintiffs."

You have another letter going out on the 13th of January; you have another letter going out on the 22nd of January --

THE COURT: That may be suspicion, but I am so sick and tired of suspicions where there is no real evidence of fact -- suspicions today are such a horrible thing. That's all it is is suspicion.

It's about time that we see evidence and facts

to support it, that they be brought out on facts and not suspicion.

MR. MC CRATE: I am seeking that opportunity by discovery. That is precisely what I am seeking, and the only reason I ask that is that I can present you with probative evidence that will satisfy you.

THE COURT: How long will your discovery take, two minutes, five minutes?

If you said to him, "Did you get any clients, Mr. Berger, or Mr. Wolfe," or anybody else, as a result of these letters? "Has anyone come to you and said, 'We received your fee schedule. We received the letter from Sulzberger and we think it is a fabulous idea and we come to you because of that.'" That would be the end of that question. You have that. Or if they say, "No, we never did," where do you go from there?

MR. MC CRATE: Your Honor, the discovery that I seek --

THE COURT: What is it? That's what I want to find out, the discovery that you seek, that is exactly why I asked the question the way I did. All right.

MR. MC CRATE: I would want to take the deposition of Norman Bookbinder; I would want to take

the deposition of Mr. Sulzberger; I would want to take the deposition of Mr. Gumely. I would want to take the deposition of Mr. Hamlin; I would want to take the deposition of someone at the Adams Ashforth firm; I would want to take the deposition of, I believe, Frank Dolger, at Brown, Harris and Stephens; I would want to take the deposition of Frank Karelson; I would want --

THE COURT: Let us assume that you examined Mr. Sulzberger and he says, "Yes, I had a few come in and talk to me, pretty nice people, and when I told them about it, I talked to them, but they never went to Mr. Wolfe and Mr. Berger." What do you do with that? You can't accuse them of a thing.

So what? So they talked to them?

MR. MC CRATE: I submit that the final measure here is not in each and every case --

THE COURT: I get a feeling that all these big cases now on the collateral issues of did the lawyer act properly under the rules of ethics -- I get a tremendous feeling about this, this is about the third tremendous case that I have had that no one ever wants to try the merits of the case but they are always interested in whether the lawyers are acting properly.

MR. MC CRATE: But, your Honor --

THE COURT: I don't say you are doing wrong by doing it. I am not saying that at all, but it seems to be a whole new way of life for a lawyer.

In negligence suits the whole new way of life for a lawyer is malpractice; they forget "hit in the rear," they can't find those any more so now they go to the malpractice suits.

MR. MC CRATE: I would regret if we are coming into a period where such were necessary in any number.

THE COURT: This is becoming quite prevalent, I can tell you this, and that is all because of the change of the rules of the ABA and the state rules. It's the only reason for it. There were no other reasons for it.

MR. MC CRATE: If you took canon 27 or canon 28 under the old --

THE COURT: Mr. McCrate --

MR. MC CRATE: -- under the old canons you would have exactly the same problem you have here.

THE COURT: I find one thing wrong with all these tremendous canons, and as I made a statement down in Washington I said I wish they would take all our rights away from the judges and give some

back to us, instead of giving them to us and taking them all away. Nobody can do anything that is proper any more because suspicion arises as soon as the person does something in a case.

He has a right to be a lawyer and he has a right to be an advocate. There is no reason why he can't do either one of those things; there must be somewhere where they are doing something right, including yourself -- including yourself.

MR. MC CRATE: Your Honor, I am relying upon precedent --

THE COURT: I am, too. I am relying on my own case in the Second Circuit Court of Appeals on precedent where they said the Courts had the right to handle this type of business, and in the end they said it is good for the Bar Association -- I don't understand the decision, but I will say it anyway, I don't know how I can be right at the end and wrong in the middle -- I'll never understand that one. It's true, it's actually true. Read the decision: Incorrect in the middle, absolutely right at the end -- read the decision.

MR. MC CRATE: What I am seeking is that we may be right all the way through.

THE COURT: Probably.

MR MC CRATE: And that is precisely only what I am seeking here.

THE COURT: I don't think for a moment, Mr. McCrate, that you need all of these depositions to find out whether a lawyer has sought some additional clients, and he may have -- assuming he got one, you need fourteen people to tell you he received one client?

MR. MC CRATE: Your Honor, it is not only whether someone --

THE COURT: What is it?

MR. MC CRATE: Whether someone responds affirmatively, but it is whether the solicitation was something sent out by the attorneys and was being promoted by them.

THE COURT: True.

MR. MC CRATE: Even if they promote unsuccessfully, it is still a violation.

THE COURT: Who would be the best person to ask that? It wouldn't be Mr. Sulzberger, it would be Mr. Berger.

They have two types of current. They have alternating current and direct current, and direct current is the best, it goes right to the body.

MR. MC CRATE: In addition to Mr. Berger, I

would suggest that --

THE COURT: Mr. Wolfe?

MR. MC CRATE: Mr. Wolfe and Mr. Lippman and Mr. Felston are --

THE COURT: That should take about four and a half minutes, no more. There shouldn't be loads and loads -- it shouldn't be an inquisition, it shouldn't be a searching expedition, as we used to say in the state court, but we don't use it in the federal court because it is a dirty word -- I don't believe in searching expeditions. It should be a straightforward, direct question: Did you, by any chance, receive a client because of the circulars? And they must answer truthfully yes or no after you swear them.

MR. MC CRATE: May we --

THE COURT: Circumvention will never lead to anything.

MR. MC CRATE: May we go forward on that basis on Wednesday morning and --

THE COURT: I didn't decide anything at this point. I am throwing out some suggestions, and listening.

They may be in worse shape than you are when they stand up, I don't know.

MR. MC CRATE: What I would suggest, your Honor, is that we be permitted this discovery on Wednesday morning and that the order be continued through that time until we have an opportunity to make this inquiry.

THE COURT: Let me hear what they have to say.

MR. SPRAGUE: May it please the Court, I don't need any of my papers here to --

THE COURT: I don't need all these lawyers in the courtroom. I can do with two lawyers arguing.

MR. SPRAGUE: I answer one question directly: No client has been secured as a result of any of the letters by Sulzberger or Elliman, and there is no client whatsoever that is existing at this time as a result of those documents.

Furthermore, with regard to the plaintiffs presently before the Court, there is no even a contention here that anything that has occurred with Sulzberger or Elliman had anything to do with them and they are yet asking that Mr. Berger be disqualified from these plaintiffs who got nothing whatsoever to do with it.

When your Honor talks about suspicions today, I submit to you that is exactly what is being created for purposes of delaying this matter and

avoiding getting into the merits of the case.

Everybody that they mentioned, Mr. Berger, Mr. Lippman, Mr. Felston and Mr. Wolfe, are presently right here in this courtroom and, as a matter of fact, there is no reason for any delay if in fact there was any need to even hear anything from them.

What they have obtained so far, your Honor -- I don't intend to getinto the procedural part, because I think we ought to get right to the merits of this case --

(continued next page)

THE COURT: That is where I want to get, to the merits.

MR. SPRAGUE: This is in fact an interference between counsel and his clients, or potential clients, and when they make a big noise out of the fact that there are other clients who perhaps want to get into the case, they don't have any right to limit people who want to get into a case.

THE COURT: I think we often see that. I don't think for a moment that they are arguing that point.

MR. SPRAGUE: But they are trying, and they are in effect achieving it by an order which prohibits counsel from having contact with potential clients.

THE COURT: Speaking as deliberate as possible, without making a determination, it wasn't at all the best judgment to have this -- whoever sent it out, I don't care whether it was Sulzberger, it still wasn't the best judgment in the world to have that type of a letter go out with the fee schedule attached to it.

It may not be wrong under the canon of ethics, it still is improper in the sense that you shouldn't do it. It has nothing to do with being violative of a section of law or not, or a section of a canon of ethics or not, but that can raise a jaundice or suspicion; you see, you are not totally removed from

their feeling. You are within the boundaries, like the football field is 100 yards, you stay within those lines, and you are within them.

MR. SPRAGUE: I say let's stick to the merits, and I am not getting into the procedural --

THE COURT: You don't need a ten-week deposition situation; all you need is a five-minute deposition situation.

MR. SPRAGUE: Testimony right here, your Honor at this time.

THE COURT: I am more than willing to do it right here if it becomes necessary.

MR. SPRAGUE: Let me say this: This is supported by the affidavits. Not going into the fact of how people intervened or when, and matters that were dismissed by the Court, which your Honor knows more about than I do, but what I propose --

THE COURT: I remember everything that happened. They know that.

MR. SPRAGUE: But what do these affidavits that have been submitted show? They show that Sulzberger was a client of a law firm here, the Wien firm; Mr. Lippman washis lawyer. Mr. Sulzberger spoke to Mr. Lippman because Mr. Sulzberger wanted to advise his own principals.

What did Sulzberger say? He managed realty properties, co-ops. He wanted to advise his directors in the various co-ops about pending litigation.

THE COURT: That is all well and good, but don't excuse yourself. You don't promiscuously take a fee schedule and attach it to a real estate agent's distribution of a letter.

MR. SPRAGUE: Let's get to how did he get that fee --

THE COURT: That's what I want to hear. It wasn't right in my day of practice and it is not right in this day of practice, whether it be the federal court or state court. I don't disassociate both courts, I think everybody has the same kind of rules.

MR. SPRAGUE: It is conceded, and the affidavit states, Mr. Berger has never spoken to Sulzberger or Elliman, doesn't know them.

How did Sulzberger get ahold of that fee thing?

THE COURT: That's what I want to know.

MR. SPRAGUE: The affidavit before you, your Honor, from Mr. Sulzberger and from Mr. Wolfe --

THE COURT: I will take it by word of mouth and won't look at the affidavit.

MR. SPRAGUE: What is stated by them is that back in July of 74 Sulzberger, who was in various

business ventures with Richard Lefrak, was discussing that litigation, the oil suit. He wanted to have certain information, Sulzberger did. Lefrak said, "Call my co-counsel, Mr. Berger, and they can give you more details."

Mr. Wolfe was told as a result called this fellow Sulzberger and answer his questions. Mr. Wolfe called Sulzberger. Sulzberger wanted to know what it was about and wanted to know what the fee arrangements were, and wanted this sent to him in writing.

Mr. Wolfe sent a letter -- Mr. Wolfe thought Sulzberger was a lawyer, and if you look at the letter that is there, he addresses Sulzberger as Esquire, but he sends Sulzberger a letter in July of '74 telling Sulzberger what the litigation is about, and attaching a fee schedule -- this contingent fee arrangement in blank.

THE COURT: How did he get it?

MR. SPRAGUE: The Berger firm has its own fee schedule that it had with other clients.

THE COURT: Fine, but how did Mr. Sulzberger get it?

MR. SPRAGUE: He asked for it. He wanted to know what the fee arrangements were.

THE COURT: And they gave it to him?

MR. SPRAGUE: And Mr. Wolfe -- and it is in the letter that is part of the exhibit -- said pursuant to your request I am sending this to you.

THE COURT: You think that was discreet, giving it to him and saying, "Well, in case you get a client you can show him what the fees are?"

MR. SPRAGUE: It wasn't for that purpose. It was for Sulzberger himself to know what it was.

I submit to your Honor, Mr. Wolfe could have put in the letter what the fee arrangement was. It is more direct and simpler just to have the form. It wasn't signed at all.

THE COURT: If you permit me to interject this one statement, I can understand if this is one of your own form retainers and it is an infant case or appellate division retainer in an infant case in the State of New York, I can understand giving it to Sulzberger; you can get them at Blumberg forms, but we have a few extra ones. I don't understand how a lawyer permits a fee schedule of a fee interest in a case to be circulated outside of his law office where he hasn't seen the paper.

I told you you would be in just as rough shape as they were when you stood up; neither one of

you is without sin when you come right down to the situation. Suspicion is a sin and so is the other.

MR. SPRAGUE: If Mr. Sulzberger called me and said, "I might be interested in participating in this matter, what are your fee arrangements that you are going to have with me?" Your Honor --

THE COURT: Wouldn't you be angry and annoyed if he decided to make photostats of your fee schedules and give it out to the rest of the world?

MR. SPRAGUE: That is not what happened.

THE COURT: I don't know if it did or not, but I am just saying you wouldn't consider that good.

MR. SPRAGUE: I would be angry as the Devil at him.

THE COURT: You would be screaming around your office like everybody else.

MR. SPRAGUE: But let's stick to as it happened.

If Sulzberger asked me for it and I send it to him, that is as accurate a way of giving it to him as just describing it in a letter.

THE COURT: There are no arguments as to that.

MR. SPRAGUE: So it is sent to Sulzberger, and what happened with it? It sat. It went into a file. Sulzberger didn't do a thing with it. And this is in

July of '74.

By the way, if there was any attempt to solicit, a pretty lousy solicitor if they don't even contact the guy --

THE COURT: I would say it is a terrible way of soliciting. There are lots better ways than that.

MR. SPRAGUE: He never even contacts him again.

THE COURT: Especially with these law firms. If you don't know how to do it, you'd better read some of the books on the market.

MR. SPRAGUE: Doesn't do a thing. And what happens? This is all in the affidavit. In January of '75 Sulzberger, your Honor, never having done a thing, Sulzberger on his own now initiates an inquiry of his own lawyer, Mr. Lippman, in a firm up here in New York.

Now, it just so happens that that firm has been engaged with Mr. Berger on another matter, the Helmsley matter, and being associate counsel on that when it comes into court. And what did Mr. Sulzberger ask his own lawyer? Tell me -- and Sulzberger is now Lippman's client -- "Tell me more about this oil litigation. Is it a class suit? Is it individual suits? And put it for me in writing."

Mr. Lippman, your Honor, properly responds to

his client and he sends his client a letter telling him what this litigation is about, and telling him what the fee arrangement then is, which, by the way, is now different from what was in that blank fee schedule that had been sent in July.

Mr. Lippman didn't even know that Sulzberger had that earlier thing from July, and so Mr. Lippman gives it to his client. What does Sulzberger do? As a matter of fact, he did what I think he had an obligation to do. He is a manager for all of these co-ops and he says -- and it is in his own affidavit -- that he was under a duty to his principals to let them know what this was about, and he sent them the paraphrased, in effect, version of the Lippman letter, and on his own, without discussing it with Mr. Lippman -- it is conceded by all, no contact with Mr Berger -- he includes that earlier in blank fee agreement, and that is the way it goes about.

Your Honor, if you say to me, would I have been angry at him, would I have screamed? Sure I would. But that's not what we are talking about right now. You are talking about an attempt in a case of existing clients who in no way are involved in this issue to be deprived of the attorney of their choice, and I am telling you that no client has been obtained

as a result of the letter.

When we get to the Elliman letter, there wasn't even any fee schedule attached to his because he never had one. All he did was have the response from his own counsel, Mr. Lippman, telling him what it was about, and what did he do? He also sent that to his own principals.

I dare say, there wasnothing wrong with that. Now, all of a sudden --

THE COURT: I think the answer to the problem, without arguing any further, is that Mr. McCrate set up a number of questions that he wishes to ask and the people he wishes, and I will determine which of those people should be deposed, if any, and I will reserve decision on the entire issue at this time, and I think that is the only way we are going to resolve it.

MR. SPRAGUE: Your Honor, they are right here. I will put them on the stand myself and ask them the questions.

THE COURT: Do you have any objection to that?

MR. MC CRATE: Quite frankly, your Honor, I am only partially prepared. I have worked right through from the time I received the papers.

THE COURT: Do you want to do it another day?

We will do it on Wednesday or Thursday.

MR. MC CRATE: I would suggest Wednesday morning we could indeed be ready to go forward.

MR. SPRAGUE: If there is any delay because they arenot prepared, at least I ask you to lift whatever orders are outstanding at this time and --

THE COURT: Two days are not that important.

MR. SPRAGUE: Your Honor, it is a very embarrassing situation. You were a lawyer before you became a judge and it is very embarrassing --

THE COURT: That's why I know the simple practice of law.

MR. SPRAGUE: When clients are calling you --

THE COURT: I don't get excited about these things. I know some other judges in the court get very excited about the whole thing. I know what it is to run into a courtroom and to go into another courtroom, I know what it is with problems with clients. I didn't have a big law firm, I had to do it the hard way.

MR. SPRAGUE: If you have a client calling you, your Honor, and you've got to see him, what happens? I better not --

THE COURT: After a certain date you may talk to any one of those problems that are not involved in

this thing. Any client that is listed in this proceeding you may talk to -- there is no limitation on that. I told that to Mr. Wolfe and he knows it.

MR. SPRAGUE: Your Honor, I submit, with just the affidavits and what has now been argued to you, if they want a delay for two days, at least lift the order --

THE COURT: I will give them the two-day delay with that one restriction, if anybody should come in, if they should come in, if they don't you have no problem, because anyone else that has not been obtained because of this solicitation -- you say no one has, then there is no problem. There is no restriction. You can't have a restriction on zero. You can't have zero multiplied by three -- it is still zero.

MR. SPRAGUE: It is still an embarrassing situation, your Honor.

THE COURT: You are not going to send a letter out stating that we have been embarrassed by the federal court and Mr. McCrate.

Lawyers are big enough to stand the embarrassment and the attack and vilifications of all things that happen.

MR. SPRAGUE: Let me put them on the stand to

satisfy you there is no solicitation right here and now.

THE COURT: I am taking your word for it at this time. If they want until Wednesday morning, I will give them until Wednesday morning. There is no problem.

I don't see any hardship on your part because I am not restricting you. Only as to anyone who may come in, if anyone comes in you say, "Make the appointment for after." What's the big deal?

You are not going to be able to see him on Wednesday anyhow.

MR. SPRAGUE: The point is everybody is out looking against that tiger and they want to join this thing and we don't want to slow them down.

THE COURT: The answer to the tiger is that there is no one who wants to be a nice little lioness.

MR. SPRAGUE: What time on Wednesday, your Honor?

THE COURT: We can put it on for 10:00 o'clock

MR. MC CRATE: In this courtroom at 10:00 o'clock?

THE COURT: Yes. We don't need any bigger courtroom unless you intend to bring more people.

MR. MC CRATE: Very well, your Honor.

We would like, your Honor, to provide a list of documents that we would like produced in lieu of a subpoena. If plaintiffs' counsel --

THE COURT: Let us hear what you are looking for. I will determine whether you need them or not.

MR. MC CRATE: What I would suggest is that we prepare a list and let Mr. Sprague have it later this afternoon.

MR. SPRAGUE: I am not agreeing to any documents. You hit it right on the head when you say direct -- we have the people here. They want a delay, now they want other things.

THE COURT: What documents can you be looking for? You are not going to get their information from their work products. I am the last fellow in the world to ask for a work product, I tell you that right now.

MR. MC CRATE: We simply want copies, your Honor, of the communications that have been sent out, which could be used in this circularization.

THE COURT: Letters to their clients? You wouldn't be entitled to that. You would not be entitled to that under a regular procedure, let alone under a collateral proceeding.

MR. MC CRATE: Your Honor, is Frank Karelson a client of theirs?

THE COURT: I don't know who he is.

MR. MC CRATE: Frank Karelson --

MR. SPRAGUE: We have no letter to Frank Karelson, your Honor. This is direct --

THE COURT: They have no letter.

MR. MC CRATE: It is a letter that follows the text --

MR. SPRAGUE: We have no letter to him.

THE COURT: They didn't send it out. They can't produce something they don't have.

What else?

MR. MC CRATE: I would suggest, your Honor, letters to or from non-parties to this litigation.

MR. SPRAGUE: Objection.

THE COURT: That is a multitudinous area.

MR. MC CRATE: In respect of this case.

MR. SPRAGUE: That is the very thing you are talking about, the suspicions.

THE COURT: That may be work product situation. Let's assume they wrote to an employee of one of the companies who willingly sent them back a letter. You would notbe entitled to that. That is investigation.

You wouldn't be entitled to that under the regular-rules, so how can you get it under a collateral rule?

MR. MC CRATE: To the extent, your Honor, that the letters are directed to inviting participation in this lawsuit, I think we are entitled to it.

THE COURT: Not unless you have something specific in mind. I have to rule on a collateral issue where you are asking for a deposition. There must be a definite item to which you address yourself and to which the Court can rule upon.

I cannot rule upon something that is all-encompassing because you are not entitled to it. It is only a collateral issue and it is -- it is absolutely limited to so many things, as a matter of fact -- collateral issue is the most difficult thing to prove as compared to anything else.

MR. MC CRATE: I will be inquiring of Mr. Lippman whether he sent additional letters of the kind of which we have specific information. I would like the production of those.

THE COURT: The best thing for you to do --

MR. SPRAGUE: Your Honor, Mr. Lippman is right here.

MR. LIPPMAN: May I approach the bench, your

Honor?

THE COURT: You should not say anything. You'd better sit down.

MR. SPRAGUE: Your Honor, they are right here.

THE COURT: You are like the spoke in the wheel that made the other seven.

MR. SPRAGUE: Your Honor, I take it in view of their faltering around, not being able to suggest anything specific, we will have four witnesses.

THE COURT: I suggest you bring in your presentation.

MR. MC CRATE: We will be ready to proceed on Wednesday morning, your Honor.

THE COURT: Wednesday morning. Good day, gentlemen.

(Time noted: 3:30 p.m.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-135 (M.A.C.) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT M. OSGOOD, being duly sworn, deposes and says:

I am a member of the Bar of this Court and associated with the firm of Sullivan & Cromwell, attorneys for defendant

Exxon Corporation. I submit this affidavit in further support of Exxon's proposed Order to Show Cause dated February 21, 1975, and in further opposition to the motion of David Berger, P.A., dated February 24, 1975 to dissolve the temporary restraining order granted by this Court, after notice, on February 21, 1975, to strike Exxon's motion, and for additional relief.

Karelsen Letter to Albert B. Ashforth, Inc.

At approximately 3:30 P.M. on Friday, February 28, 1975 I visited Mr. Henry Ashforth of the real estate management firm of Albert B. Ashforth, Inc., 12 East 44th Street, New York, New York, at his office. I inquired of Mr. Ashforth whether his firm had received any communications suggesting that buildings under a management contract with Albert B. Ashforth, Inc. should consider hiring David Berger, Esq. and joining these lawsuits as plaintiffs. He informed me that on or about February 5, 1975 his firm received a letter from the law firm of Karelsen Karelsen Lawrence & Nathan, 230 Park Avenue, New York, New York, stating that "We are recommending that the enclosed letter be circulated to all our cooperatives. It could amount to a sizeable piece of change. You will be hearing more on this shortly."

Attached to the cover letter from the Karelsen firm to Albert B. Ashforth, Inc. was a document of mysterious origin. The bottom portion of the letter which would have identified the author apparently had been cut off before it was mailed to Albert B. Ashforth, Inc. This "anonymous" letter is addressed to Frank Karelsen, Sr., Esq. of the Karelsen law firm; it suggests that David Berger, Esq. is

handling a lawsuit for the Lefrak Organization, Inc. and that others can hire Mr. Berger for $1 per apartment for out-of-pocket expenses, plus 1/3 of any recovery.

The letter is in most respects a verbatim cut-and-paste copy of the document attached as Exhibit A to my affidavit dated February 21, 1975, sent by the real estate management firm of Douglas L. Elliman & Co. to other potential plaintiffs.

I asked Mr. Ashforth whether he would let me have the original copies of the communications he received from the Karlesen firm and he responded affirmatively. The original copies were furnished to me in an envelope and will be available for inspection in the court room. Photocopies of the letters are attached hereto and incorporated herein as Exhibits A and B.

At the outset of my conversation with Mr. Ashforth I identified myself as an attorney with Sullivan & Cromwell, a firm representing one of the oil company defendants in this litigation. I asked him whether his firm was a party to the proceeding; he confirmed that it was not.

I asked him whether Karelsen Karelsen Lawrence & Nathan was counsel to Albert B. Ashforth, Inc. and he replied "no". I asked him whether he knew the circumstances surrounding his firm's receipt of the letter and he replied that it had "come out of the blue".

I asked Mr. Ashforth whether his firm had taken any action after receiving the attached letters; he said that since the communications had been unexpected, his firm had recently written a letter to the Karelsen firm requesting further information. Mr. Ashforth said that his firm has not transmitted the letter or otherwise communicated on the subject with the approximately 40 buildings which it manages. It is still under consideration.

Lippman Letter to Brown Harris Stevens

About 11:45 A.M. on Friday, February 28, 1975 I telephoned Mr. Frank Doelger of the real estate management firm of Brown Harris Stevens, Inc. of 14 East 47th Street, New York, New York. I identified myself as an attorney with Sullivan & Cromwell and stated that we represented one of the oil company defendants in the pending antitrust litigation before this Court. I asked Mr. Doelger whether his firm was a party to the litigation and he replied that it was not. He said that since his firm did not own any buildings he did not see how Brown Harris Stevens, Inc. could be a party to the litigation. I told him that I did not believe Brown Harris Stevens, Inc. was a party either.

In response to my inquiry whether his firm had received any communications suggesting that buildings under a management contract with Brown Harris Stevens, Inc. might wish to hire David Berger, Esq. and join these cases as plaintiffs, he told me that on or about January 13, 1975, Mr. Joseph A. Grotto, President of Brown Harris Stevens, Inc. received a letter from William Lippman, Esq. I asked Mr. Doelger whether Mr. Lippman represented Brown Harris Stevens on any regular or intermittent basis, to which he said "no". He said that his firm was represented by Alvin J. Burnett, house counsel. Mr. Doelger volunteered that the Wien firm, of which Mr. Lippman appears to be a member, represented Harry B. Helmsley and that Brown Harris Stevens was owned by Mr. Helmsley.

Without my asking, Mr. Doelger read me the letter of January 13, 1975 from William Lippman, Esq. to Mr. Grotto, and while I do not recall the precise language that was read

to me over the telephone, it is my very clear recollection that the Lippman letter to Brown Harris Stevens was in major respects identical to the "anonymous" letter to Karelsen attached hereto as Exhibit B and also, of course, a repetition of the letter sent by Mr. Gumley of Douglas L. Elliman to a number of potential plaintiffs, attached to my February 21, 1975 affidavit as Exhibit A. I did not secure a copy of the Lippman letter to Mr. Grotto.

Mr. Doelger told me that Brown Harris Stevens presently had under consideration the question whether to send a letter to all of the cooperative buildings and condominiums which it manages -- he said approximately 90 of them -- that a decision had not yet been made, but that he had been asked to draft a letter to such potential plaintiffs.

Robert M. Osgood

Sworn to before me this
3rd day of March, 1975.

Notary Public

LEONARD DINUCCI
NOTARY PUBLIC, State of New York
No. 24-[illegible]
Qualified in [illegible] County
Commission Expires March 30, 1975

Exhibit A—Letter

KARELSEN KARELSEN LAWRENCE & NA.HAN
COUNSELLORS AT LAW
230 PARK AVENUE
NEW YORK, N. Y. 10017

MURRAY HILL 6-6543
CABLE ADDRESS "KARELSEN" NEW YORK

EPH A. KARELSEN (1903-1986)
FRANK E. KARELSEN
MALCOLM R. LAWRENCE
FRANK E. KARELSEN, III
EDGAR J. NATHAN, 3RD
ERNEST L. BIAL
JOHN T. McNALLY

LIONEL ETRA

EDWARD R. PECKERMAN, JR.
OF COUNSEL

JA 254

February 5, 1975

Mr. H. Adams Ashforth
Albert B. Ashforth, Inc.
12 East 44th Street
New York, N.Y. 10017

Re: Fuel Oil Suit

Dear Mr. Ashforth:

We are recommending that the enclosed letter be circulated to all our cooperatives. It could amount to a sizable piece of change.

You will be hearing more on this shortly.

Sincerely yours,

Frank E. Karelsen, III

Encl.
FEKIII:mp

Exhibit B—Letter

JA 255

Frank Karelsen, Sr., Esq.
Karelsen, Karelsen, Lawrence & Nathan
230 Park Avenue
New York, New York 10017

Dear Mr. Karelsen:

As you may be aware, there is a considerable body of opinion which holds that fuel oil and electric fuel adjustment billings have been excessive and illegal.

A lawsuit has been brought by the Lefrak Organization against the major oil companies and joining in this suit have been the interests held by Mr. Harry Helmsley, the New York City Housing Authority, as well as many individual owners and co-operative corporations.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Wien, Lane & Malkin has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

It is believed that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

We are bringing this matter to your attention so that you may decide whether, or not, you wish to join in this action. In the event you do make such a decision, we will be pleased to furnish, to the attorneys, all related information as to consumption, prices and billing on your behalf so as to establish your claim.

UNITED STATES DISTRICT COURT

JA 256

EASTERN DISTRICT OF NEW YORK

----------x

S. J. LEFRAK, et al.,

-against-

74-C-1700

ARABIAN AMERICAN OIL CO., et al.,

Defendants.

----------x

United States Courthouse
Brooklyn, New York

March 5, 1975
10:30 o'clock A.M.

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

DAVID BERGER, ESQ.
STANLEY R. WOLFE, ESQ.
RICHARD A. SPRAGUE, ESQ.
JEROME EDELMAN, ESQ.
Attorneys for Plaintiff

MESSRS. SULLIVAN & CROMWELL
Attorneys for Defendant Exxon

BY: ROBERT MC CRATE, ESQ.
ROBERT OSGOOD, ESQ.
KENNETH DIALO, ESQ.

MESSRS. KISSAM & WALPIN
Attorneys for Defendant Gulf Oil Corporation

BY: ANTHONY S. GENOVESE, ESQ.

MESSRS. WHITE & CASE
Attorneys for Defendant Arabian-American Oil Company

BY: FREDERIC S. NEWMAN, ESQ.
E. MILLS PRENTICE, ESQ.

MESSRS. CRAVATH, SWAINE & MOORE
Attorneys for Defendant Asiatic Petroleum

BY: W. FILLMORE WOOD, JR., ESQ.
Of Counsel

CHARLES F. KAZLAUSKAS, JR.
G. KENNETH HANDLEY, ESQ.
Attorneys for Defendant Texaco Inc.

Appearances:

MESSRS. DONOVAN LEISURE NEWTON & IRVINE
Attorneys for Defendant Mobil Oil

BY: JAMES A. MAGEE, ESQ.
Of Counsel

MESSRS. KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

BY: MILTON J. SCHUBIN, ESQ.

MESSRS. LORD, DAY & LORD
Attorneys for Standard Oil Company of California

BY: GORDON SPIVACK, ESQ.
Of Counsel

MESSRS. SIDLEY & AUSTIN
BY: DICK FLYNN, ESQ.

THE CLERK: Civil motion, Lefrak v. Arabian Oil Company.

MR. EDELMAN: May I suggest before we proceed -- we had a conference in chambers before we left regarding the restriction of the inquiry, the method of inquiry, and I thought we might have a conference with your Honor on that.

THE COURT: Today again?

MR. EDELMAN: Right here.

THE COURT: Surely.

MR. EDELMAN: May I say for the record that the attorneys who are available here to be questioned have some problems -- there are some problems in my mind regarding the ethical nature of the inquiry, because they have a relationship of attorney-client, and in addition thereto, they cannot waive --

THE COURT: If there is a relationship between attorney-client, of course they cannot give any information whatsoever because that will be privileged, under the old rules, common law, or under the new federal rules, either one.

They haven't told us that yet, but we are supposed to use them, I think.

MR. EDELMAN: Thank you, your Honor.

On my reading of the Ceramco case, that specifically states --

THE COURT: That was the case that was on just before you this morning.

MR. EDELMAN: Regarding --

THE COURT: I hope everyone does not decide in this case to be as heroic as they are in that case.

MR. EDELMAN: The right of inquiry is the right of inquiry by the Court. They say it is the Court's -- the courts not only have the supervisory power but also the duty and responsibility to disqualify --

THE COURT: That is the middle of the decision.

MR. EDELMAN: Yes.

THE COURT: If you read the end of it it says just the opposite.

MR. EDELMAN: That's correct, your Honor. However, it is my reading -- to disqualify counsel for unethical conduct prejudicial to his adversaries.

I respectfully submit that under this decision the only one who would have right of inquiry would be your Honor in connection with the right of inquiry. I can find no cases or no support for any right of inquiry by counsel on such a collateral issue.

This is a collateral attack --

THE COURT: This will be a court hearing. I

will ask the questions. I never intended anyone else to come in and ask questions.

MR. EDELMAN: With that in mind also, it is our contention, so the record be clear --

THE COURT: If a question I ask is privileged, it won't be answered.

MR. EDELMAN: Thank you, your Honor. So the record is also clear, it is the Plaintiff's contention that the only purpose of this collateral attack is to try to in some way put fear in the hearts of the attorneys for the plaintiff and also to try to disqualify the attorney for the plaintiff from properly -- or affect his ability to properly represent the client, all to the detriment of his client;

That there is no foundation, no basis for these alleged charges, and that it is purely a fishing expedition.

Also, for the purpose of protecting the record on appeal --

THE COURT: I can't agree with you totally on that. There is no basis for the court to look into it, because we do have the letter and we do have the fee schedule attached, and that we must inquire into, even though the affidavits you say clear up the matter, it

is not the same thing.

I am trying to avoid criticism somehow; I don't think I ever will, but I will try.

MR. EDELMAN: Also, the other thing is that in order to protect the rights of the parties on an appeal, and I presume that the purpose of this attack is both for dilatory purposes and for other purposes of a similar nature -- may I just for the record respectfully object to the inquiry, only for that purpose.

Beyond that, we are ready.

MR. MC CRATE: If your Honor please, I would only except to the suggestion that Exxon does not have an interest in the solicitation of claims and the stirring up of litigation against it, and that this is indeed a concern of a defendant, and against that a defendant may appropriately bring a matter to the attention of the Court.

This is precisely what the authorities that we have cited to your Honor set out. In addition to that --

THE COURT: I don't think there is any dispute about that. That is not the dispute.

The dispute is whether or not it becomes an advocate proceeding or whether it merely becomes a judicial hearing, whether the Court as a judge is the one to determine whether or not there has been a

violation of the canon of ethics; it is no different than any other type hearing.

If I had appointed someone to act in my place as the advocate, let's say, for the person to ask the questions, I possibly have the right to do that likewise, but that would only cause more problems because I don't want to be accused of dilatory tactics.

MR. MC CRATE: I respectfully submit, your Honor, that I do have a right to interrogate in the hearing conducted by your Honor.

THE COURT: Absolutely. I am so convinced without reading a thing -- I may be talking off the top of my head, which I enjoy most of the time -- I am absolutely convinced that you have no right to question anyone in this type of a hearing. This is not a hearing that affects you per se. This is a hearing that affects the client relationship of a lawyer.

MR. MC CRATE: It profoundly affects my client, your Honor, if litigation is being stirred up against them.

THE COURT: The only way your client can be affected is that the lawyer would be discharged and

then a new lawyer will be hired.

The case will never be affected by it because the case will be tried no matter who is hired.

MR. MC CRATE: We are indeed not asking for the dismissal of the case, but we are asking --

THE COURT: Mr. McCrate, what purpose would it serve for you to be the one to bring on the inquisition, so to speak?

MR. MC CRATE: I don't consider the questions that I wish to propound an inquisition, by any means.

THE COURT: What purpose would it serve? I'm trying to find out a purpose.

MR. MC CRATE: The purpose that it would serve --

THE COURT: Yes?

MR. MC CRATE: -- is to disclose whether or not there is a concerted action to stir up litigation against my client.

Indeed, that is a concern of my client.

THE COURT: That would be an adversary proceeding. This is not an adversary proceeding. This is strictly a judicial proceeding to determine whether or not certain canons of ethics have been violated, and the only one to say whether they have been violated is the Court.

I can hold an in-camera hearing on this if I wanted to, I am convinced of that likewise, but I have decided to hold an open hearing.

MR. MC CRATE: If your Honor pleases, if that is your ruling, if your ruling is that I may not ask questions --

THE COURT: You may stand and advise the Court if you feel there are some avenues that I have not explored, and then it will be up to the Court to determine whether those explorations are proper under the circumstances.

MR. MC CRATE: I will go a step further than that, if I may. I have, in deference to your Honor's request that these proceedings be as expeditious as possible, done two things in preparing for this morning:

All of the questions I proposed to propound are laid out on paper. I had proposed to call Mr. William J. Lippman first. I have here the questions for him.

I then proposed to call Mr. Ralph W. Feldsten. I have the questions that I proposed to propound to him.

Then I proposed to call Mr. Stanley Wolfe, and I have the questions that I proposed to propound to him.

Finally, I proposed to call Mr. David Berger, and I have the questions that I proposed to propound to

him.

In addition --

THE COURT: The only thing that bothers me with what you have said so far, and the questions you have, is whether or not you have appointed yourself to determine whether or not they have violated the canon of ethics -- that bothers me.

MR. MC CRATE: In anticipation of the hearing, I thought I had the right to propound the questions and that is why I so prepared.

THE COURT: You have a right to indicate to the Court where you believe the transgressions may be; if you want to submit those to me you may do so, but I don't think you have the right to be the advocate, nor be my advocate.

MR. MC CRATE: In aid of that interrogation, your Honor, I also asked the Reporter in advance of the hearing to mark in order of the interrogation that I was proposing exhibits -- defendant's exhibits A through H for identification. These are taken from the papers that are before your Honor -- we are not going out with any new matters, but it does relate them, the order in which they have been marked, directly to the questions that I wish to propound.

If I am not to be permitted to propound those questions, I respectfully request that the Court propound the questions --

THE COURT: I will look at your questions to determine whether or not they are proper.

MR. MC CRATE: And I would submit at the same time the copies of the exhibits that have been marked for identification.

MR. SPRAGUE: Your Honor, just a brief response. Obviously, I quite agree with the Court that it is the Court's area of inquiry, because this is for the Court to be satisfied, it has nothing to do with counsel.

I do not, however, submit that the Court should accept the order of documents, their questions.

The Court is not really their counsel nor my counsel, and I would just even point out to the Court that in the documents that they have submitted, which they have labelled from A to a certain point, they separate these documents from how they are in the affidavits, not showing a certain document is connected with a certain letter that there was -- that there was a forwarding letter with it.

They have omitted, for example, a crucial

document. So all I would suggest is if the Court is going to documents instead of being -- instead of being in an order that I suggest or the other side suggests, the Court has the affidavits and you can go from there.

THE COURT: I intend to take a ten-minute recess and review these, and I will be out, and the course of the inquiry will then be determined and how long it will take.

Ten-minute recess.

(Recess taken.)

THE COURT: You have something else?

MR. SPRAGUE: Just briefly, your Honor.

MR. MC CRATE: Your Honor, I have asked that the copies of the questions that I gave to your Honor be marked for identification and have provided a copy for marking.

During the recess, at the same time your Honor was reviewing the questions, I made copies available to Mr. Sprague and he and the witnesses have had an opportunity to go over all the questions.

MR. SPRAGUE: As I was starting to say, your Honor, I do not know once you commence your questioning whether the Court will permit objections to be made or not, but with regard to the questions that

have been submitted by Mr. McCrate, I think just for the record at this time, your Honor, I would like to state that I object to each and every question that appears on his sheet concerning Mr. Berger, except for one question, and that is on the third page, the third question from the bottom.

Without going into each and every question, I submit that the questions are in many instances going into attorney-client relationships and in many instances the questions are too broad and too far-reaching.

In regard to the questions that appear on the sheet concerning Mr. Wolfe, on the same basis I object to each and all of the questions except for what appears on the paper handed to me on the last page, the three questions from the bottom -- I'd better point out which item I am talking about because it is in handwriting on my sheet, your Honor.

There are four questions on the bottom of my sheet. The fourth question starts, "Since February 21, 1975 has the Berger firm received any communication from prospective plaintiffs in this litigation?"

That is on the Wolfe series.

THE COURT: The last page?

MR. BERGER: On my sheet. These are in handwritten form.

THE COURT: I don't have that.

MR. SPRAGUE: Maybe it is typed on your form.

THE COURT: Have you sent these revised retainer --

MR. MC CRATE: You were handed the draft -- I believe the question is the same. Here is the copy typed (addressing Mr. Sprague).

MR. SPRAGUE: Your Honor, on your copy, which apparently is typed, the fourth question from the bottom: "Since February 21, 1975..." -- there is no objection --

THE COURT: You'd better look at this. I don't have that kind of a sheet at all.

MR. SPRAGUE: I would have hoped that what I was given was the same as what the Court had.

THE COURT: I can probably short-circuit this whole discussion. I have the questions in my mind that I am going to ask, and they are not going any further. It is a question of the answers that I get to the questions. If I get the answers, then I may have some more questions. If I get certain other answers, there will be no other questions.

I just cannot see -- and I place it on the record -- what purpose it will serve to go through this entire questioning that Mr. McCrate has delivered to me; it has nothing to do, No. 1, with the merits of the action, and, No. 2, if there has been no solicitation, merely a gratuitous sending out of a fee schedule, that doesn't make it a solicitation, and that is what I want to find out.

I don't think we must go through anything else -- and that is for the record -- and if the Court of Appeals disagrees with me, fine.

I want the first witness to be Mr. Lippman. I will take the order of the witnesses and I will ask questions.

W I L L I A M J . L I P P M A N , called as a witness, after having been first duly sworn by the Deputy Clerk of the Court, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Lippman, I know that you are an attorney.

A Yes.

Q Likewise, you are familiar with the proceedings that we have here at this time.

I need not go through the background of the

proceedings?

A No.

Q You understand that the complaint being made by the defendants is that someone along the chain of events of attorneys permitted someone to use a fee schedule attached to a manager's letter.

A Yes.

Q That is about as succinctly as I can put it.

Now, what I would like to know from you, Mr. Lippman, did you have any conversations -- they are privileged as far as attorney and client are concerned, and you may tell the Court if I am in that area -- did you have any conversations with Mr. Berger reference to any solicitation of any clients on the outside?

A No, I did not.

Q How did it come about that you spoke about this matter with anyone, or Mr. Berger himself?

Did you ever speak to Mr. Berger?

A The first time I spoke to Mr. Berger was last week.

Q What was that in reference to?

A In reference to this proceeding.

Q Had you ever spoken to him before?

A Never.

Q There did come a time when you received a fee schedule from Mr. Berger's office?

A Yes, my firm did.

Q Your firm is what?

A Wien, Lane and Malcom.

Q Do you know the circumstances under which your firm received this fee schedule; can you advise the Court?

A Yes.

Q All right. Tell me.

MR. SPRAGUE: Your Honor, may I just ask the Court to clarify which fee schedule?

The reason I say that is there are other clients independent of the matter --

THE COURT: We are talking about the fee schedule attached to the letter of Mr. Sulzberger, that's the one.

MR. SPRAGUE: I don't think he understood that.

BY THE COURT:

Q Did you understand that?

A If it is the fee schedule that is attached to Mr. Sulzberger's letter, I do not know how or when or if ever our firm received it.

(continued next page)

BY THE COURT:

Q Did you have any conversation with Mr. Berger's firm reference to any matter involving Mr. Sulzberger, as far as the fee schedule is concerned?

A No.

Q You say the first time you talked to Mr. Berger was last week?

A Yes.

Q Did you ever have any conversation with Mr. Wolfe of the same firm in reference to this fee schedule?

A Never.

Q Do you represent anyone in this proceeding yourself?

A In the proceedings bearing these captions?

Q Yes.

A No, I do not.

Q Have you in any way, with Mr. Sulzberger now, had any conversations with him outside of an attorney-client relationship in reference to this proceeding?

A No.

THE COURT: Do you have any questions you want me to ask, Mr. McCrate?

MR. MC CRATE: Yes, your Honor.

I respectfully request the questions that I have

submitted be propounded to the witness.

THE COURT: If he has not done anything, there is no reason why I have to go into any of the other questions you asked.

This is not going to be a searching expedition. I do not intend to have a searching expedition.

MR. MC CRATE: I respectfully submit, your Honor, it is not searching simply to inquire with respect to the various documents -- .

THE COURT: It is merely a question of whether he solicited business.

As a common man would say: Are you soliciting business?

Q Did you solicit any business whatsoever, professional-wise, in this proceeding to try to obtain any plaintiffs for this proceeding from anyone?

A No.

Q Did you have anything to do with any communications that were sent out by Mr. Sulzberger or reported by Mr. Sulzberger?

A None at all.

Q Did you have anything to do with the fee schedule being attached to Mr. Sulzberger's letter?

A No.

Q Did you communicate with anyone, orally or otherwise, in reference to it?

A Other than Mr. --

Q I am talking prior to the proceedings brought here.

A Never.

THE COURT: I do not think there is anything else to ask him.

MR. MC CRATH: Your Honor, if I may, Mr. Lippman prepared a letter dated January 15, 1975. There was an identical letter sent out by him, I believe, on January 13, 1975.

It appears in this record that a third letter of the same text was sent out on January 22, 1975. I submit that questions as to the drafting of the Lippman form letter that was going out in this way on a repeated basis, and which is the very basis of the circulars that were thereafter distributed, is an appropriate subject of inquiry.

That is why I included a number of questions about the drafting of that letter, where the information came from, why certain information was included in the letter, and why it was sent to the various people to whom it was sent.

BY THE COURT:

Q Did you cause that letter to be sent to Mr. Sulzberger, sir?

A Yes, I did.

Q Now, did you in any way authorize Mr. Sulzberger to attach a fee schedule and distribute it to anyone else?

A Never.

Q At the time that you sent this letter that I am speaking of -- there are three letters, he says.

A Yes.

Q At the time that these letters were sent out, were they sent out from you to Mr. Sulzberger?

A No.

Q How were they sent out; tell us the circumstances.

A Mr. Sulzberger's letter?

Q Yes. We are talking about those letters.

MR. MC CRATE: No, the letter I am referring to, your Honor, is Mr. Lippman's letter to Mr. Sulzberger; Mr. Lippman's letter to Mr. Grotto, and Mr. Lippman's letter to Mr. Hamlin.

Q Tell us the circumstances of each one of the letters, sir.

A Sulzberger-Rolfe has been a client of mine since

1969. Mr. Sulzberger is the President of that firm. He is also my client.

He requested information concerning this litigation and that is the information that is contained in the letter of January 10th.

Q He requested it from you?

A Yes.

Q And when he requested the information from you -- you say he previously has been your client?

A He has been my client since 1969.

Q Then did you do something as a result of him asking about information?

A I wrote the letter of January 10.

Q And those are the circumstances behind it?

A Yes.

Q As a result of this letter that you wrote was any other business solicited, or any other business, so far as you know, any other names added to this action as a result of the letter you wrote?

A No, not so far as I know.

Q How about the other letters?

A I wrote a letter to Joseph Grotto, who is the President of Brown, Harris, Stephens.

That letter is substantially the same as the

one that I wrote to Mr. Sulzberger. Brown, Harris, Stephens has been a client of mine since 1957. It is owned by Harry B. Helmsley, who is a client of my firm. Mr. Grotto requested the information that is in that letter.

Q In what form was that request made?

A Mr. Grotto telephoned me and asked me for it. He told me that Mr. Helmsley had requested that he call me and get the information.

Q Had you at any time prior to this phone call spoken to Mr. Grotto about this proceeding?

A No.

Q Did you know at any time prior that he was interested in this proceeding at all?

A No.

Q So that you say that as a result of the telephone conversation you sent that letter out.

Did you authorize that letter? Did you authorize that?

A Which letter?

Q Mr. Grotto's.

A Mr. Grotto, to my knowledge, never sent a letter to anybody.

Q You did speak to him about the proceeding itself?

A Yes, I did.

Q You say he is one of your former clients or is your client?

A Yes.

Q How about the third letter we are talking about?

A I wrote a letter also in January, I believe it was the 22nd, to John F. Hamlin, who is the President of Douglas L. Elliman & Co., and which has been a client of mine for several years. I acted as special counsel to that firm.

Mr. Hamlin asked me for information about this litigation and I wrote him a letter similar to those I had written to Mr. Sulzberger and Mr. Grotto.

Q At any time, in any one of these three letters that you sent out, did you authorize anyone to distribute it to anyone else?

A Never.

Q Did any information come to you from any source that these letters were being distributed and that you were supposedly the one that gave the authorization for it?

A I received a copy of the Sulzberger-Rolfe letter, which is dated February 6th, I believe, on the 11th of February. And that was the first time I had ever seen it.

I received a copy of the Douglas Elliman letter, after it had been sent -- I don't remember exactly when, but

it was toward the middle or end of February.

Q Did you at any time have any conversation with Mr. Berger's office, either through Mr. Berger or through Mr. Wolfe, prior to the execution of these letters and the delivery?

A No.

THE COURT: You may step down.

MR. MC CRATE: May I, your Honor, ask the Court to address questions to this witness respecting Mr. Karelsen and his communications with Mr. Karelsen?

THE COURT: I will ask him that.

BY THE COURT:

Q Did you have any communication with Mr. Karelsen?

A Yes.

Q How did that come about?

A Mr. Karelsen has been a friend of mine for over twenty years. His father is the president of a cooperative which is managed by Douglas Elliman.

Q Did you at any time institute or initiate anything in having Mr. Karelsen call you by suggesting to him that he should call you to try and get involved in this litigation?

A Never.

THE COURT: All right.

MR. MC CRATE: Your Honor, I would like questions to the witness on the positions held by Mr. Lippman and Mr. Karelsen in the Association of Lawyers for Cooperatives.

THE COURT: No. I will deny that. That is not the issue before the Court. The issue before the Court is whether or not he caused by some -- by initiating some act on his part of soliciting clients, that's the only issue. We are not going to go through the Association. I refuse to go through those things.

I just refuse to try to go through a man's whole life because one collateral issue is being tried. I limit this.

You can take exceptions to my limitations.

MR. MC CRATE: Just so it is understood why I ask, there is a letter in the record written by Karelsen, and I respectfully submit that it should be ascertained whether that letter was written by Mr. Karelsen after a conversation with Mr. Lippman.

I am informed that Mr. Lippman is the President and Mr. Karelsen is the Vice President of this Association of Lawyers, and that they have --

THE COURT: Assuming he wrote it in response to some advice he had received and decided to do it on his

own, you can't charge Mr. Lippman with that.

MR. MC CRATE: I respectfully submit, your Honor, that questions as to the conversation that preceded that letter would be very germane.

THE COURT: I will sustain the objection on it.

Mr. Berger, you will have to take the stand.

D A V I D B E R G E R , called as a witness, having been first duly sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Now, Mr. Berger, you likewise are familiar with practically every avenue in this proceeding itself?

A Yes, sir.

Q And you are likewise familiar with the issue that is before the Court at this time, being a collateral issue?

A Yes, sir.

Q And you are one of the persons that has been complained of soliciting through some letters that have been sent out?

A Yes, sir.

Q Have you at any time from the institution of this proceeding up to this time authorized anyone to solicit potential plaintiffs for this proceeding?

A No, sir.

Q In reference to these letters that were spoken about, you heard of the letters to Mr. Grotto, Mr. Sulzberger and Mr. Karelsen -- in reference to those letters, did you have anything to do with those at all?

A No, sir.

Q Did you ever speak to Mr. Lippman about it?

A No, sir.

Q Did you ever speak to Mr. Wolfe about permitting -- about these letters themselves?

A No, sir.

Q Did you at any time initiate any action whatsoever in attempting -- in having these letters delivered or sent out by anyone else?

A No, sir.

Q When was the first time that you received notice of the fee schedule, your fee schedule being attached to a letter of Mr. Sulzberger, who is the manager of a cooperative?

A The first time that I heard of that was when I was in Israel, your Honor, in connection -- attending a convention of the International Academy of Trial Lawyers, and I received a telephone call from Mr. Wolfe very early Israel time telling me that Exxon had filed this motion.

My response was one of shock because I said, "Who is Sulzberger? I never heard of Sulzberger or Sulzberger-Rolfe." And I just knew nothing about it.

I said the whole thing was a mystery to me and I don't know why anybody would file such a motion without checking with our office.

Q What you are saying to me very succinctly is that you did not give anyone the authority to submit your fee schedule to anyone.

A Absolutely.

THE COURT: Anything further?

MR. EDELMAN: Your Honor, may I have the date --

THE COURT: Ask me and I will decide whether he should be asked the question or not.

MR. EDELMAN: Your Honor, may I submit that the date of this conversation in Israel be set forth?

THE COURT: It was last week at some time.

THE WITNESS: It was some time -- it was the 22nd, your Honor, of February, very early in the morning.

THE COURT: That was Washington's legitimate birthday. The 17th was illegitimate.

MR. EDELMAN: May we have that off the record?

THE COURT: That can go on the record.

MR. EDELMAN: The illegitimacy of our country?

THE COURT: If Congress can change a birthday,

they are pretty good.

MR. MC CRATE: If your Honor please, I suggest that all of the questions that are on Defendant's Exhibit D for identification should have been propounded to Mr. Berger.

I understand that your Honor has ruled against me in that respect.

THE COURT: No, I will ask him, No. 1, whether or not --

BY THE COURT:

Q You did prepare your own fee schedule, I suppose, fee retainer, we will call it?

A I drafted a letter in July, 1974, your Honor, to be used in connection with a particular client who wished to retain our firm.

The way I did it was, we do not have a form, sir. I actually dictated the letter and that letter I sent to the client with my signature on it and then the client was to return it in accordance with previous discussions.

Q Would you tell us who that client is?

A Well, I don't recall the name of the client.

Q Would it have been Harry Helmsley, would that be it?

A Not at that time, because -- but Mr. Helmsley

and his properties are clients of our office, sir, and we used a letter agreement like that that was ultimately attached to Sulzberger's letter. But it was different from it.

Q Now, there are also statements here that there was a revised retainer form.

A We don't have a form. But the fact is, sir, within the limits of privilege, Mr. Feldsten, who represents the Helmsley interests, and his firm, and I had extended discussions over a substantial period of time over the wording of my letter.

I proposed a letter and he had certain revisions, and that was the revised copy.

(continued next page)

Q That's how that came about?

A Yes, sir.

Q Just let me look and see if there are any other salient questions.

Do you know of your own knowledge whether or not you have received any returns of any one of these letters to which either your retainer or revised retainer has been attached?

A To my personal knowledge, we have not secured any clients.

THE COURT: That's all.

MR. MC CRATE: Whether there were blank retainer forms sent out from Mr. Berger's firm is something that I believe is very relevant.

THE COURT: He has no knowledge.

Q Do you have any knowledge of that?

A No, sir.

THE COURT: All right, you may step down.

(Witness excused.)

MR. MC CRATE. I respectfully except.

THE COURT: Yes. You have an exception.

Mr. Wolfe.

STANLEY R. WOLFE, called as a witness, first being duly sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Solfe, you are definitely familiar with everything that has taken place. You have been in the courtroom each and every time a proceeding has taken place in this court on this matter.

A Yes your Honor.

Q Likewise, you are familiar with the petition that was filed with reference to the disqualification on the basis of solicitation.

A Yes, I am.

Q And you are likewise familiar with the complaint that has been made by reason of the fact that certain fee schedules or fee retainers, as they call them, being submitted to persons which they claim could indicate solicitation?

A I am familiar with their allegations.

Q What do you know of anything and the circumstances surrounding the fee retainer that was attached to Mr. Sulzberger's letter?

A In July of 1974 I received a phone call from Richard Lefrak saying that a Mr. Sulzberger, who was a

joint venturer of his in a real estate endeavor, had learned of the litigation and wanted some details, some information.

So rather than he hear it second-hand, Richard said to him, "I'll see if somebody from Mr. Berger's office will return your inquiry and tell you what this litigation is all about."

Shortly thereafter I had a telephone conversation with Mr. Sulzberger, at which I described what the litigation was and what it involved and in general what the fee arrangements would be.

At that time I thought he was a lawyer who owned his own property and who also managed other people's property.

I guess about a day after I had that telephone conversation I wrote him a letter, which is attached to my affidavit, which in two paragraphs summarizes the litigation and attached essentially was what Mr. Berger had referred to me; and that was a letter that Mr. Berger had used in discussions with other clients prior to that time. I attached that letter without his name at the top, nor did Mr. Berger's signature -- and in fact, without Mr. Berger's knowledge, as the best way to tell an individual who owned his own properties what this office, meaning the Berger office, would require with respect to not only the fees but

the letter is far broader than that, it involved the duty of a potential client to supply information to us, as you know, about the nature of the businesses and the like.

I sent that out to him saying essentially, "this is what has been suggested by the Berger office to other people who are interested in the litigation." And that is why the letter was there. I never heard from Mr. Sulzberger again. I never talked to him again. When I saw these papers that Exxon filed on that Friday, it took me a long time to go back into the files to refresh my recollection as to even what they were talking about.

Q Are you telling the Court that Mr. Sulzberger was referred to you by Mr. Lefrak?

A His name was mentioned to me and therefore I called Mr. Sulzberger who said to me, "What's this all about? I understand that Lefrak has a lawsuit. What's it all about?"

Q Did your office, Mr. Berger or yourself, or anyone in your office, ever contact Mr. Sulzberger outside of this one time?

A Never, to my knowledge.

Q Did you ever say to anyone, "See if you can get any clients around, you know, there may be some extra ones around somewhere that would like to come into this thing"?

A Not me. I have no authority. That's why that letter was not signed.

Q Did you at any time after speaking to Mr. Sulzberger, and in the first and only conversation you say you had with him, suggest to him by inference or innuendo or by any other means that you can possibly convey a thought to a person by, that if he can get other people to come in on this thing it would be a gravy train, so to speak?

A Not at all.

Q What you are telling the Court is that the only thing that you know about is that you spoke to him and you sent this letter out to him?

A In July.

Q Did you attach a fee schedule to that, a fee retainer?

A I attached what they are calling as the fee retainer, which was unsigned, it had no addressee, which I thought was the most accurate way of telling somebody what the general terms of representation were, and it has been used previously by Mr. Berger -- if Mr. Berger knew that I had sent it out, it probably never would have been attached.

Q Did you receive any returns -- by that, did anyone because of this letter you sent to Mr. Sulzberger retain your firm in this proceeding, as far as you know?

A To the best of my knowledge, no.

Q Has anyone indicated to you who has come to you subsequently -- has anyone retained you since --

A Since July, yes. But I have no knowledge, nobody has ever said to me, "I learned of this from Mr. Sulzberger."

Q And no one has said that to you?

A No one has ever said that to me.

Q Were there any blank retainers sent out, for instance, to Mr. Sulzberger, in addition to the one you attached and said, "Well, here, here are nineteen more blank retainers just in case you have use for them." Did you ever do anything like that?

A No.

Q Did you ever authorized anyone to attach it to any other letter?

A No, your Honor.

Q Did you ever say to anyone, regardless of who it may have been, the man on the street or the man in the office or the secretary or anyone else, "This is what we are going to do, if someone calls tell them to go ahead and use the blank retainers"?

A No, not at all.

Q As far as you are concerned, did you ever

send any blank retainers out, with the exception of S berger?

A I don't think it's a retainer. There was never anything sent out other than in the context of the same thing with Mr. Sulzberger.

Q Did you ever authorize Mr. Sulzberger to talk to someone about this proceeding on your behalf with the intention of obtaining them as clients?

A No.

Q Did Mr. Berger ever do that?

A To the best of my knowledge, Mr. Berger has never talked to Mr. Sulzberger.

THE COURT: Do you have any other questions, Mr. McCrate?

MR. MC CRATE: I think Mr. Wolfe has ~~the~~ other blank retainer forms ~~which~~ were sent out, and I believe that that is an appropriate subject of inquiry.

THE COURT: For the record, I assume that every law office has what I call multi-retainer forms that fit the client. I never sat up here, you know, Mr. McCrate, with blinders on my eyes so that I don't know what happens in law offices.

Of course they have certain clients which

require certain retainers. If you want to ask them if they have other type retainers, I will ask him. If he says no, I won't believe him, truly I would not believe him, because a retainer is something that law offices must have and they must prepare them.

I don't know what you mean by it.

MR. MC CRATE: I submit that since very early days of this century the sending out of blank retainer forms has been an improper conduct.

THE COURT: I didn't say that. I said I assume he has blank retainer forms in his office, just like everyone has blank retainer forms for negligence actions in New York; if they don't have them they go to the office next door and grab one right away and make sure that they get the fifty per cent down there.

You can't be idle on this.

MR. MC CRATE: To whom blank retainer forms were distributed in connection with this litigation --

MR. SPRAGUE: Your Honor, I would object --

BY THE COURT:

Q Were any other distributed, to your knowledge?

A Distributed, no.

THE COURT: That's the end of that question.

Q You are certain of it? Did you ever distribute

any blank retainer -- in reference to this proceeding, I am not going into the background of an office, that's none of my business -- did you ever in this proceeding distribute any blank retainer, just promiscuously send it out to someone?

A Promiscuously send it out? No.

Q Did you send it out to the client with the intention of --

A I never send out any --

MR. SPRAGUE: The answer is no?

A No.

THE COURT: Anything else?

MR. MC CRATE: Your Honor, I would ask that the questions on Defendant's Exhibit -- I believe this was intended to be marked K, questions for Stanley Wolfe, be propounded, and I gather that your Honor declines to propound the balance of the questions on this list.

Q Are any of the communications the result -- did you have any as a result of the Sulzberger-Rolfe or Douglas Elliman circular letters, are any of these communications the result of them?

Do you have any communications from these people?

A To the best of my knowledge, no, I never heard of Elliman or ever received any response from those letters

that I know of.

Q The next question is, did you receive any communications as a result of this letter being sent to Mr. Sulzberger?

A To the best of my knowledge, no.

MR. MC CRATE: Has there been any attempt, your Honor, to ascertain --

MR. EDELMAN: I object to that.

THE COURT: I will not go into attempt. That is the inference part of it. We are not going on inferences here, we are going on fact.

You may step down.

MR. MC CRATE: Exception, your Honor.

THE COURT Do you have another witness you wish to call?

MR. MC CRATE: I had --

THE COURT: Mr. Carlson. Is Mr. Carlson here?

MR. MC CRATE: Ralph W. Feldsten.

THE COURT: Mr. Feldsten.

MR. MC CRATE: The questions for Mr. Feldsten I had submitted are Defendant's Exhibit J.

RALPH W. FELSTEN, called as a witness, having been first duly sworn, testified as follows:

MR. SPRAGUE: Your Honor, with regard to this witness, if he is only being called because Mr. McCrate wants him, I think he should not be because it is the Court who is to be satisfied.

If the Court is satisfied the Court should not call him, but if the Court wants him, that's different.

THE COURT: I have just a few questions I would like to ask, because since his name has been mentioned as part of the issue I think that no stone should be left unturned. I will ask him now.

EXAMINATION

BY THE COURT.

Q Mr. Felsten, you are familiar with the proceedings here?

A I am, your Honor.

Q You are an attorney at law?

A I am, your Honor.

Q Did you do anything in reference to blank retainers in soliciting any potential plaintiffs?

A No, sir.

Q Did you have anything to do with the letters of which we spoke, the letter to Sulzber-Rolfe and Grotto and --

A No, I did not know of them.

Q What, if anything, did you have to do with any of these fee retainers coming into the hands of anyone of those persons or any other person?

A If we speak about that attachment -- that famous in blank form, nothing.

Q You did nothing.

Now, do you represent anyone in this proceeding?

A I represent Mr. Helmsley.

Q You represent Mr. Holmsley.

Now, Mr. Helmsley has been a client of yours?

A Oh, God, yes.

Q How many years has Mr. Helmsley been a client of yours?

A Twenty years that I have been with the firm.

Q Did you make a retainer for Mr. Helmsley or did you use a retainer that was drawn by Mr. Berger?

A Mr. Berger sent me a retainer form that on its face -- addressed to Mr. Helmsley, that on its face looked like what was attached to that famous now letter.

Glancing at it I could see that it looked -- I am talking about Mr. Helmsley's letter.

Q Yes.

A Going through it. I think I spent like a month

and a half negotiating changes in that.

Q Did any other client come to you as a result of that retainer into this case that you can recall?

MR. SPRAGUE: You say that retainer. I'm not quite sure --

THE COURT: The retainer between yourself and Mr. Helmsley.

THE WITNESS: Mr. Helmsley is a man who personally controls a lot of property.

Q Did you send out any letter, or by way of communication did you advise anyone that you were now in this litigation and would they like to retain you as the attorney in their behalf?

A I solicited no one, if that's what the question is.

Q That's what it is.

A No, sir, I solicited no one.

THE COURT: I have no other questions of this man.

MR. MC CRATE: Your Honor, I respectfully submit that Exhibit J and the questions on it should be propounded to Mr. Felsten.

If your Honor does not believe that they should be I respectfully except.

THE COURT: He said no returns as a result of any of those letters, and all your questions relate to that very item.

BY THE COURT:

Q Is that true?

MR. SPRAGUE: They all go into conversations between him and his co-associate counsel.

THE COURT: I am not permitting that. That's why I stayed away from that completely.

MR. MC CRATE: Among the exhibits before your Honor is a letter dated February 11, 1975 from Mr. Felsten to Mr. Berger, in which there is a reference to the "the retainer letter form distributed is the one we used prior to our recent decision to suggest the alternative separate lawsuit..." -- and the letter goes on, "We are now waiting for returns on this." I assume referring back to the Sulzberger-Rolfe --

MR. SPRAGUE: I don't care what you assume. What's your question?

Q I will ask the pointed question:

Did you participate in the drafting of Mr. Lippman's letter to anyone of the individuals we spoke about?

A No. Mr. Lippman did ask me questions about the background on the suit, which I gave to him. I did not see the letters, I did not participate in the drafting of them. I would like as a personal -- I'd better not.

Q I will ask you the question to make sure you don't get into the well, so to speak.

The next thing, as a result of a February 11th letter did anything occur or any action initiate by reason of that letter in someone being retained by you?

A No, my February 11th letter was a transmittal letter.

Q And that's all it was?

A Yes, sir.

Q And that was transmitted to whom?

A To Mr. Berger for his information. My foot was out the door as I wrote it.

MR. MC CRATE: Your Honor, I invite your attention to the statement in the letter, "We now are waiting for returns on this and at least two other groups of possible litigants..." Then the further sentence, "We should have these results by February 21."

Q Without mentioning --

A I am speaking of clients of mine who expressed interest -- clients of Bill's, who expressed

interest -- therefore mine -- and those are the ones I referred to.

THE COURT: All right. You may step down. You may take exception.

MR. MC CRATE: Again I except, your Honor.

THE COURT: All right, you have an exception.

(Witness excused.)

THE COURT: I don't think there are any other witnesses that are required at this time.

You were not there long enough to be a witness, Mr. Sprague, and you, Mr. Edelman, weren't in it long enough to be a witness and all the others have been so quiet they need not be witnesses, and the Court will now reserve on it and I will make my determination.

MR. MC CRATE: May we have an opportunity to tomorrow morning submit a memorandum to your Honor?

THE COURT: Surely. But you don't need a whole entourage if you are going to submit it.

MR. SPRAGUE: Your Honor, having at least heard and seen the affidavits, heard these witnesses, at least pending your decision I would ask you to remove that order that exists.

THE COURT: We will wait until tomorrow

morning. Tomorrow morning there definitely will be a decision on it.

Can you have your memo here by 10:00 o'clock?

MR. MC CRATE: We will, your Honor.

MR. EDELMAN: May I be served with a copy of that memorandum?

THE COURT: Be here at 10:00 o'clock and when he walks in and hands it to me you be here at the same time and probably by 10:30 I will have a decision

* * *

Exhibit A—Undated Fee and Retainer Agreement on Letterhead of David Berger, P.A.

Ex. A

JA 305

DAVID BERGER, P.A., ATTORNEYS AT LAW

1622 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19103

(215) 732-6000

DAVID BERGER
H. LADDIE MONTAGUE, JR.
WARREN D. NULTY
LEONARD BARRACK
STANLEY R. WOLFE
GERALD J. ROSOS
JOEL C. MEREDITH
DANIEL E. BACINE
MICHAEL K. SIMON
BRUCE K. COHEN
PAUL J. MCMAHON
WARREN RUBIN
EDWARD H. RUBENSTONE
MERRILL G. DAVIDOFF
STEVEN J. GREENFOGEL

COUNSEL
ALEXANDER H. FREY
HAROLD BERGER

TELEX 834-309

Re: Lefrak Organization, Inc. v.
Arabian-American Oil Company, et al.
74 Civ. 979

Pursuant to your request we agree to represent you as an intervenor plaintiff in the above litigation instituted on behalf of Lefrak Organization, Inc. against major oil defendants seeking, inter alia, treble and punitive damages for federal and state antitrust violations resulting from substantial overcharges for certain petroleum products and electric fuel adjustment billings.

We agree to render all legal services necessary for the representation of your claim for damages in the above litigation for which we and associate counsel, if any, shall be entitled to a contingent fee of 33-1/3% of the amount received by you from defendants in damages, either by way of settlement or verdict or otherwise (after deduction for out-of-pocket expenses for which we will be reimbursed as set forth below). In the event the Court awards a counsel fee to be paid by defendants as a separate item over and above any recovery for damages sustained by you, such counsel fee shall be retained by us.

In order initially to defray the expenses of the litigation, you agree to contribute a sum equal to $1 for each unit in your buildings involved in your claims (each apartment or rental unit being regarded as a unit for this purpose). These expenses of litigation will include but will not be limited to such items as filing fees, costs

of transcripts, duplication costs, long distance telephone calls, travel expenses, costs of depositions, computer services, expert services of economists, investigators, etc. We will keep you fully advised of these expenses from time to time as they are being incurred.

You will fully cooperate with us and furnish our lawyers and others working on this case with all necessary and appropriate information so that we may vigorously and properly represent your interests in this litigation.

Please be good enough to sign the copy of this letter for our files.

With all best wishes, I am,

Sincerely,

David Berger

DB/pw

Approved and Accepted:

_____ _____

Date

Exhibit B—Letter to Edward Sulzberger from William Jay Lippman, Dated January 10, 1975

JA 307

WIEN, LANE & MALKIN

COUNSELLORS AT LAW

LINCOLN BUILDING
60 EAST 42ND STREET
NEW YORK, NEW YORK 10017

TELEPHONE: (212) 687-8700 • CABLE: LAWWIEN

LAWRENCE A. WIEN
ALVIN D. LANE
PETER L. MALKIN
ALVIN SILVERMAN
FRED LINDEN
ROBERT L. WEISSMANN
WILLIAM JAY LIPPMAN
RALPH W. FELSTEN
STANLEY KATZMAN
MARTIN B. COWAN
JOHN L. LOEB
MARTIN D. NEWMAN
C. MICHAEL SPEAD
DONALD A. BETTEX
MELVIN H. HALPER
ROBERT A. MACHLEDER

RICHARD M. ANGELSON
ALBERT J. WILSON
STEPHEN SCHLACHMAN
RICHARD A. SHAMIRO
GERALD EINHORN
MITCHELL J. NELSON
JEFFREY R. GALLIN
ALAN D. GORDON

Ex. B

January 10, 1975

Mr. Edward Sulzberger
Sulzberger-Rolfe, Inc.
654 Madison Avenue
New York, N. Y. 10021

Re: Lefrak Organization, Inc. v.
Arabian American Oil Company, et al

Dear Ed:

You have requested information concerning the lawsuit brought by the Lefrak Organization against the major oil companies.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Our firm has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

We believe that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

I will be pleased to answer any additional questions that you may have.

Sincerely,

Bill

William Jay Lippman

WJL:mgc

Exhibit C—Letter to Board Presidents from Sulzberger-Rolfe, Inc., by Norman Buchbinder, Dated February 6, 1975 JA 309

Ex. C

SULZBERGER-ROLFE INC. REALTORS 654 MADISON AVENUE, NEW YORK, N.Y. 10021 • (212) 593-78
7654

February 6, 1975

Dear Board President:

As you may have heard, a lawsuit has been brought by the Lefrak Organization against the major oil companies.

The suit is being prosecuted in the U.S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery. Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigati

The firm of Wien, Lane & Malkin has been retained as associate counsel wit Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

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The Complaint asks for millions of dollars in compensatory and punitive damages as well as injunctive relief against any further illegal conduct by the oil companies. The basis product involved in the lawsuit is heating oil used in residential buildings.

Many Boards of Directors of co-operative buildings in New York have already agreed to contribute $1.00 per unit in their buildings in return for receiving a proportion of the award which may be granted by the court.

I am enclosing an agreement drawn by Mr. Berger. I suggest that this agreement be presented as soon as possible to your Board of Directors for possible approval. If your Board approves, please return a signed copy of the agreement to me and I will take the necessary steps to have your building represen

If you have any questions, I suggest you call William Lippman at Wien, Lane and Malkin (687-8700).

Sincerely,
SULZBERGER-ROLFE INC.

Norman Buchbinder

DAVID BERGER, P.A., ATTORNEYS AT LAW

1622 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19103

(215) 732-8000

...GER
...NTAGUE, JR.
...D. NULTY
...ARD BARRACK
...LEY R. WOLFE
...ALD J. RODOS
JOEL C. MEREDITH
DANIEL E. GACINE
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COUNSEL
ALEXANDER H. FREY
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TELEX 834-309

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Arabian-American Oil Company, et al.
74 Civ. 979

Pursuant to your request we agree to represent you as an intervenor plaintiff in the above litigation instituted on behalf of Lefrak Organization, Inc. against major oil defendants seeking, inter alia, treble and punitive damages for federal and state antitrust violations resulting from substantial overcharges for certain petroleum products and electric fuel adjustment billings.

We agree to render all legal services necessary for the representation of your claim for damages in the above litigation for which we and associate counsel, if any, shall be entitled to a contingent fee of 33-1/3% of the amount received by you from defendants in damages, either by way of settlement or verdict or otherwise (after deduction for out-of-pocket expenses for which we will be reimbursed as set forth below). In the event the Court awards a counsel fee to be paid by defendants as a separate item over and above any recovery for damages sustained by you, such counsel fee shall be retained by us.

In order initially to defray the expenses of the litigation, you agree to contribute a sum equal to $1 for each unit in your buildings involved in your claims (each apartment or rental unit being regarded as a unit for this purpose). These expenses of litigation will include but will not be limited to such items as filing fees, costs

of transcripts, duplication costs, long distance telephone calls, travel expenses, costs of depositions, computer services, expert services of economists, investigators, etc. We will keep you fully advised of these expenses from time to time as they are being incurred.

You will fully cooperate with us and furnish our lawyers and others working on this case with all necessary and appropriate information so that we may vigorously and properly represent your interests in this litigation.

Please be good enough to sign the copy of this letter for our files.

With all best wishes, I am,

Sincerely,

David Berger

DB/pw

Approved and Accepted:

_____ _____

Date

Exhibit D—Letter to David Berger, Esq., from Ralph W. Felsten, Dated February 11, 1975

JA 312

Ex. D

DONALD A. BETTER
MARTIN B. COHAN
RALPH W. FELSTEN
MELVYN P. HALPER
STANLEY KATZMAN
ALVIN S. LANE
FRED LINDEN
WILLIAM JAY LIPPMAN
JOHN L. LOEHR
ROBERT A. MACHLEDER
PETER L. MALKIN
MARTIN D. NEWMAN
ALVIN SILVERMAN
C. MICHAEL SPERO
ROBERT F. WEISSMAN
LAWRENCE A. WIEN

WIEN, LANE & MALKIN

COUNSELLORS AT LAW

LINCOLN BUILDING
60 EAST 42ND STREET
NEW YORK, NEW YORK 10017

TELEPHONE (212) 687-8100 • CABLE: LAWWIEN

RICHARD M. ABEL
GERALD EINHORN
JEFFREY R. GALL
ALAN D. GORDON
MITCHELL J. NEL
STEPHEN SCHLA
RICHARD A. SHAP
ALBERT J. WILSO

February 11, 1975

David Berger, Esq.
David Berger, P. A.
1622 Locust Street
Philadelphia, Pennsylvania 19103

Re: Heating Oil Antitrust Litigation

Dear David:

Enclosed, for your information, is a copy of self-explanatory letter dated February 6, 1975 as distributed by our client, Sulzberger-Rolfe Inc. The retainer letter form distributed is the one we used prior to our recent decision to suggest the alternative, separate lawsuit. I doubt this will make for any difficulty. We now are waiting for returns on this and at least two other groups of possible litigants. We should have these results by February 21.

Cordially,

Ralph W. Felsten

RWF:ma
Enclosure
cc: Stanley R. Rolfe, Esq.
William Jay Lippman, Esq.

Ex. E

Exhibit E—Letter to John F. Hamlin from William Jay Lippman, Dated January 22, 1975

January 22, 1975

Mr. John F. Hamlin
Douglas L. Elliman & Co., Inc.
575 Madison Avenue
New York, N. Y. 10022

Dear Jack:

You have requested information concerning the lawsuit brought by the Lefrak Organization against the major oil companies.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Our firm has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

We believe that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

I will be pleased to answer any additional questions that you may have.

Sincerely,

William Jay Lippman

WJL:mgc

Exhibit F—Undated Letter from Douglas L. Elliman & Co., by Irwin Gumley

Ex. F

REAL ESTATE

Douglas L. Elliman & Co. INC. JA 315

INSURANCE

ESTABLISHED 1911
375 MADISON AVENUE
NEW YORK, N. Y. 10022
371-2000
CABLE ADDRESS "DOUGELLMAN"

As you may be aware, there is a considerable body of opinion which holds that fuel oil and electric fuel adjustment billings have been excessive and illegal.

A lawsuit has been brought by the Lefrak Organization against the major oil companies, and joining in this suit have been the interests held by Mr. Harry Helmsley, the New York City Housing Authority, as well as many individual owners and co-operative corporations.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Wien, Lane & Malkin has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

It is believed that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

We are bringing this matter to your attention so that you may decide whether, or not, you wish to join in this action. In the event you do make such a decision, we will be pleased to furnish, to the attorneys, all related information as to consumption, prices and billing on your behalf so as to establish your claim.

The Administrator of your building will be in contact with you to determine your decision.

Very truly yours,

DOUGLAS L. ELLIMAN & CO. INC.

Irwin Gumley
Senior Vice President

Exhibit G—Letter to Frank Karelsen Sr., Esq.

Ex. G

JA 317

Frank Karelsen, Sr., Esq.
Karelsen, Karelsen, Lawrence & Nathan
230 Park Avenue
New York, New York 10017

Dear Mr. Karelsen:

As you may be aware, there is a considerable body of opinion which holds that fuel oil and electric fuel adjustment billings have been excessive and illegal.

A lawsuit has been brought by the Lefrak Organization against the major oil companies, and joining in this suit have been the interests held by Mr. Harry Helmsley, the New York City Housing Authority, as well as many individual owners and co-operative corporations.

The suit is being prosecuted in the U. S. District Court for the Eastern District of New York by David Berger, Esq. and seeks treble damages under the Federal Anti-trust Act and damages for violation of the New York State's Anti-trust Law for claimed overcharges for fuel oil and electric fuel adjustment billings. The case is not a class action and only those who join the Lefrak Organization as plaintiffs will be entitled to share in the recovery.

Wien, Lane & Malkin has been retained as associate counsel with Mr. Berger on behalf of various residential property owners. The action is being limited to residential property claims.

Mr. Berger is a highly qualified Philadelphia trial attorney who heads a firm which limits its practice to anti-trust and securities litigation.

Counsel fees will be on a contingent basis of one-third of any amount recovered by settlement or trial of the lawsuit. Any counsel fees awarded by the court will be deducted from the one-third contingency fee. Intervening parties are being asked to advance to Mr. Berger's firm the sum of $1. per apartment to be applied toward out-of-pocket expenses. Any unused portion of the advances will be returned to the parties proportionately.

It is believed that the oil companies will probably prefer to settle the case eventually rather than litigate the issues.

We are bringing this matter to your attention so that you may decide whether, or not, you wish to join in this action. In the event you do make such a decision, we will be pleased to furnish, to the attorneys, all related information as to consumption, prices and billing on your behalf so as to establish your claim.

Exhibit H—Letter to H. Adams Ashforth from Frank E. Karelsen, III, Dated February 5, 1975

Ex. H

JA 318

KARELSEN KARELSEN LAWRENCE & NATHAN
COUNSELLORS AT LAW
230 PARK AVENUE
NEW YORK, N. Y. 10017

MURRAY HILL 6-6543
CABLE ADDRESS "KARELSEN" NEW YORK

EPH A. KARELSEN 1903-1956
FRANK E. KARELSEN
MALCOLM R. LAWRENCE
FRANK E. KARELSEN, III
EDGAR J. NATHAN, 3RD
ERNEST L. BIAL
JOHN T. McNALLY

LIONEL ETRA

EDWARD R. PECKERMAN, JR.
OF COUNSEL



February 5, 1975

Mr. H. Adams Ashforth
Albert B. Ashforth, Inc.
12 East 44th Street
New York, N.Y. 10017

Re: Fuel Oil Suit

Dear Mr. Ashforth:

We are recommending that the enclosed letter be circulated to all our cooperatives. It could amount to a sizable piece of change.

You will be hearing more on this shortly.

Sincerely yours,

Frank E. Karelsen, III

Encl.
FEKIII:mp

 Ex. I

Exhibit I—Questions for William J. Lippman

Questions for William J. Lippman

Are you a member of the bar of this Court?

Do you customarily engage in litigation matters yourself?

Have you had any professional experience in antitrust matters?

When did you first see any blank forms of retainer agreements with the Berger firm?

Describe the circumstances in which you first saw a blank Berger firm retainer agreement.

When did you first speak with anyone in the Berger firm relating to the litigation against the oil companies?

With whom have you spoken?

Did any of these conversations relate to the possibility of additional plaintiffs entering the litigation?

Who drafted the letter which you sent to Mr. Sulzberger under date of January 10, 1975?

Did you get any information for that letter from any other person?

Did you review the text of that letter with anyone before it was sent to Mr. Sulzberger?

Prior to January 10, 1975, had you ever prepared a letter or any other document setting forth the information contained in your letter to Mr. Sulzberger of January 10, 1975?

When you wrote "We believe that the oil companies will probably prefer to settle the case eventually rather than litigate the issues", whose belief were you expressing?

Who provided you with the information as to the arrangement of counsel's fees?

Who told you that intervening parties are being asked to advance to Mr. Berger's firm the sum of $1.00 per apartment?

Who told you that any counsel fees awarded by the Court would be deducted from the one-third contingency fee?

Who told you that you had to join the Lefrak Organization to share in the recovery?

Did you tell Mr. Sulzberger on whose behalf your firm had been retained as associate counsel?

Who told you that Mr. Berger limited his practice to anti-trust and securities litigation?

Who suggested that you include that paragraph in your letter?

Did you make any request of Mr. Sulzberger as to the use he might make of your letter?

Did he indicate why he wanted the letter?

Did you ask him not to use the letter in any particular manner?

What was your expectation when you wrote to Sulzberger as to the use he would put your letter?

Did your expectation change at any time in the course of your conversations with Mr. Sulzberger as to the use to which he would put your letter?

How did he tell you he was going to advise property owners about the antitrust litigation?

Did he discuss the content of what he would say to property owners?

Did you ask to receive a copy of whatever he sent out?

Did he say he would send you a copy?

Did you expect to receive a copy?

Who did send you the Sulzberger-Rolfe form letter dated February 6, 1975?

When?

Did it come with a covering letter?

You have not produced your copy of this letter. Was there any indication on the copy you received as to who sent it to you or any other notation?

Did you discuss the content of the Sulzberger-Rolfe form letter with anyone at Sulzberger-Rolfe after it was sent?

Did you raise any question as to the content of the letter?

Had you told anyone at Sulzberger-Rolfe that many boards of cooperatives had already agreed to contribute $1.00 per unit?

Did you tell them that the use of your name in the letter was not authorized?

Or that the use of your firm name was not authorized?

Or that the use of Mr. Berger's name was not authorized?

Did you protest in any way to Sulzberger-Rolfe about any part of its form letter to property owners?

Did you protest to anyone in your own office the content of the communication?

Did you show it to anyone?

To whom?

Did you explain to anyone that the text of the Sulzberger-Rolfe form letter was based on your letter to Mr. Sulzberger of January 10, 1975?

Do you know if Mr. Felston was aware of this?

Did you ever discuss it with him?

Did he ever express any concern in this regard?

Did Mr. Felston tell you that he was going to send a copy of the Sulzberger-Rolfe form letter to David Berger?

When he did, you received a copy of his letter, did you not?

Did you discuss this with Mr. Wolfe?

Did you have any conversations with Stanley Wolfe or David Berger regarding the Sulzberger-Rolfe form letter?

On or about January 13, 1975, did you send a similar letter to Joseph Grotto of Brown, Harris, Stevens to the letter you sent to Mr. Sulzberger on January 10, 1975?

Was it identical?

Did he ask you for it?

When?

Did he tell you why he wanted a written letter regarding the Lefrak litigation?

What specific information did he ask for?

Before sending the same letter to Mr. Grotto that you had sent to Mr. Sulzberger, did you discuss the matter with anyone either in your firm or in the Berger firm?

What was your expectation when you wrote to Mr. Grotto as to the use he would put your letter?

Did he discuss with you the use to which he proposed to put the letter or its contents?

Did you ask to receive a copy of whatever he sent out?

Did he say he would send you a copy?

To your knowledge, has Brown, Harris, Stevens sent out any communication based upon your letter to them of January 13, 1975?

Have you received a copy of any such communication?

Did Mr. Hamlin of Douglas Elliman call you about the litigation against the oil companies before or after Mr. Sulzberger called you?

What did he ask you for?

Did he tell you why he wanted a written letter regarding the Lefrak litigation?

What specific information did he ask for?

Did he inquire as to the status of the New York City Housing Authority case?

Did he inquire as to the Rochdale Village case?

Did he inquire as to the suits brought by Long Island Lighting Company and Consolidated Edison?

Before sending the same letter on January 22, 1975 to Mr. Hamlin which you had sent to Mr. Sulzberger and Mr. Grotto, did you discuss the matter with anyone, either in your firm or in the Berger firm?

What was your expectation when you wrote to Mr. Hamlin as to the use to which he would put your letter?

Did he discuss the content of what he would say to property owners?

Did you ask to receive a copy of whatever he sent out?

Did he say he would send you a copy?

You state in your affidavit of February 28, 1975 that you received a copy of a form letter signed by Irwin Gumley, but you do not otherwise identify the letter nor produce any copy. Did it differ in any respect from the letter attached to the moving papers?

Were there any notations upon it?

Was it sent to you with a covering letter?

Was there any indication as t who had sent it to you?

Did you discuss the content of the Douglas Elliman form letter with anyone at Douglas Elliman after it was sent?

When did you discuss it for the first time?

Did you express any question about the content of the letter?

Did you furnish to Douglas Elliman any of the information appearing in the second paragraph of its form letter?

Did you discuss any of that information with anyone at Douglas Elliman at any time?

Did you tell anyone at Douglas Elliman that the use of your firm name or the use of Mr. Berger's name in the letter was unauthorized?

Did you at any time protest to Douglas Elliman any part of its circular letter to property owners?

Did you at any time discuss the Douglas Elliman letter with anyone in your office or in the Berger office?

Has anyone at Douglas Elliman told you the use it was making of its circular letter?

Have you any information as to whom either Sulzberger-Rolfe or Douglas Elliman have sent their letters?

Have you any way of knowing whether an inquiry from a property owner comes in response to one of these circular letters or not?

In addition to Mr. Sulzberger, Mr. Grotto and Mr. Hamlin, have you written to anyone else regarding the litigation in this Court?

Do you know of any circular letters similar to those distributed by Sulzberger-Rolfe and Douglas Elliman which have been sent to property owners?

Has Helmsley-Spear circulated any such letter?

Do you know of anyone else in your firm or in the Berger firm who has written any letter describing the advantages of joining in litigation brought by the Berger firm in which your firm acts as associate counsel?

Under your firm's arrangement with the Berger firm, will it share in any fee of the Berger firm in this litigation?

Would it share in the fee on any recovery by a plaintiff for which Sulzberger-Rolfe was the managing agent?

Would it share in the fee on any recovery by a plaintiff for which Douglas Elliman was the managing agent?

Would your firm share in the fee on a recovery by a plaintiff for which Brown, Harris, Stevens is the managing agent?

Would you firm share in the fee on a recovery by a plaintiff for which Helmsley-Spear is the managing agent?

Would your firm share in the fee on a recovery by a plaintiff for which Adams Ashforth is the managing agent?

Will Sulzberger-Rolfe receive any compensation or other consideration from your firm for its work in this regard?

Will Douglas Elliman receive any compensation or other consideration from your firm for the work it has done in this regard?

Ex. J.

Exhibit J—Questions for Ralph W. Felsten

Questions for Ralph W. Felsten

Are you a member of the bar of this Court?

Do you customarily engage in litigation matters?

Have you had experience in antitrust matters?

When did you first become familiar with the form of retainer agreement being used by the Berger firm in this litigation?

Did you at any time prior to February 1975 see such an agreement in blank form?

Were copies of this retainer agreement in blank form kept in your office at any time?

Did there come a time when you used a different form? [Cf. "the one we used prior to our recent decision"--2/11/75.]

When did you make this change in the form?

Did you discuss this with Mr. Berger?

What were the changes?

When did you stop suggesting intervention and start suggesting that plaintiffs bring separate lawsuits?

When did you decide that any fee awarded by the Court would be deducted from the 33 1/3% contingency fee?

When did you first learn of the Sulzberger-Rolfe circular letter of February 6, 1975?

How did you learn of it?

Did you participate in the drafting of Mr. Lippman's letter of January 10, 1975 to Mr. Sulzberger, or his letter of January 13, 1975 to Mr. Grotto, or his letter of January 22, 1975 to Mr. Hamlin?

Were you aware before any of those letters were sent that they were being sent?

Were you aware of their contents?

Did you at any time discuss their contents with anyone in the Berger firm?

On February 11, you were waiting for returns on the Sulzberger-Rolfe circular letter. Have you received any returns since that time?

To your knowledge, has the Berger firm received any returns on the Sulzberger-Rolfe circular letter?

Who were the other groups of possible litigants on which you were awaiting returns on February 6, 1975?

Were any of these groups circularized by Douglas Elliman or Brown, Harris, Stevens?

Do you know if they were circularized with any similar communication?

On what basis did you state that you should have the results by February 21?

Just what results were you awaiting?

Do you know anyone to whom the Sulzberger-Rolfe circular was sent?

Do you know anyone to whom the Douglas Elliman circular was sent?

Do you know of any similar circular being sent by managing agents to apartment owners?

Have you taken any steps to restrain in any way the circularization by any of these managing agents of which you have knowledge?

Do you know of any protest having been made by anyone in your firm or in the Berger firm regarding either the content or the use of your names in these circulars?

Under your firm's arrangement with the Berger firm, will it share in any fee of the Berger firm in this litigation?

What determines whether your firm will share in the fee on a recovery by a particular plaintiff?

Questions for Stanley Wolfe

Have you discussed this or related litigation with Mr. Lippman of the Wien firm at any time prior to the week of February 23, 1975?

When did you first discuss this litigation with Mr. Lippman?

Did you at any time furnish him information relating to the fee arrangements by your firm in this litigation?

When did you first discuss with anyone in the Wien firm the content of Mr. Felsten's letter of February 11, 1975 to Mr. Berger?

When did you first receive a copy of that letter?

Have you taken any steps to this time to correct any misstatements in the circular letter of Sulzberger-Rolfe?

Have you taken any steps to this time to correct any misstatements in the Douglas Elliman circular letter?

Have you from time to time sent blank retainer agreements relating to this litigation to persons other than Sulzberger-Rolfe?

To your knowledge, has anyone else in your firm sent blank retainer agreements to persons outside your office?

Are you familiar with the revised retainer letter form to which Mr. Felsten refers in his letter to Mr. Berger of February 11, 1975?

Have you sent this revised retainer letter form in blank to anyone outside your office?

Mr. Felsten noted in his letter that they were waiting for returns on the Sulzberger-Rolfe circular letter. Have you received any such returns?

Since February 11, have you received returns from any other groups of possible litigants?

Has anyone explained to you why it was anticipated that such results would be received by February 21, 1975?

Since February 21, 1975 has the Berger firm received any communication from prospective plaintiffs in this litigation?

Have these communications been recorded?

Are any of these communications the result of the Sulzberger-Rolfe or Douglas L. Elliman & Co. circular letters?

Have you made any attempt to determine whether any of these communications are the result of the Sulzberger-Rolfe or Douglas L. Elliman & Co. circular letters?

Exhibit L—Questions for David Berger

Questions for David Berger

What arrangements do you have with Richard Lefrak for the sharing of attorneys' fees with respect to any of these matters?

What arrangements do you have with the firm of Wien, Lane and Malkin with respect to the sharing of attorneys' fees in any of these matters?

Do any arrangements with these attorneys relate in any way to the expenses of conducting any of the litigations?

Did you at any time make a decision to limit the Lefrak cases to claims by owners of residential property?

With whom did you reach this decision?

Did you ever authorize anyone to so state?

Are you familiar with the blank form of retainer agreement annexed to the Sulzberger-Rolfe circular of February 6, 1975?

Are you, in fact, prepared to accept retainers on the tersm set out in that blank form of retainer agreement?

Have you taken any steps to inform Sulzberger-Rolfe or the recipients of their circular regarding your attitude with respect to the blank retainer agreement?

Have you raised any question as to the text of the Sulzberger-Rolfe communication or in any way protested its distribution?

Have you discussed with Harry Helmsley or any of his representatives bringing in additional plaintiffs into any one of these actions?

Have you a retainer agreement from Harry Helmsley?

From which of his residential properties do you have such retainer agreements?

Do you know whether Helmsley-Spear has solicited its cooperatives to determine whether they wanted to become plaintiffs?

Have you seen the form of any such solicitation?

As to what plaintiffs do you regard the Wien firm to be associate counsel?

Are you now using a revised retainer letter form different from that attached to the Sulzberger-Rolfe circular?

When did you commence using the revised form?

When did you make the decision to suggest the alternative separate lawsuit?

With whom did you reach this decision?

Have you received any returns on the Sulzberger-Rolfe solicitation?

Has Mr. Felsten given you any results of such returns?

Has Mr. Felsten informed you what other groups of possible litigants for which he is awaiting returns?

Has he indicated to you why he thought he would have these results by February 21?

Do you have any way of identifying any prospective plaintiff who comes to you as a result of the Sulzberger-Rolfe or Douglas Elliman solicitations?

Do you have any information as to whom either the Sulzberger-Rolfe or Douglas Elliman circular letters were sent?

Do you have any information as to whom your firm has sent blank retainer agreements in connection with this antitrust litigation other than Sulzberger-Rolfe?

Have you made any effort to ascertain

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al., Plaintiffs, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 74-C-1700 (M.A.C.)
NEW YORK CITY HOUSING AUTHORITY, Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-15 (M.A.C.)
ROCHDALE VILLAGE, INC., Plaintiff, -against- ARABIAN AMERICAN OIL COMPANY, et al., Defendants.	:	Civil Action No. 75-C-135 (M.A.C.)

EXXON CORPORATION'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO PROHIBIT SOLICITATION AND TO DISQUALIFY PLAINTIFFS' COUNSEL

This reply memorandum is submitted following the hearings before the Court on March 3 and 5, 1975. It sets forth in summary the facts developed to this time on the record (subject, of course, to the limitations placed by the Court on the evidence which defendant's counsel was permitted to develop on this motion).

Based on this record, we submit that at least since the mailing in early February 1975 of the Sulzberger-Rolfe and Douglas Elliman circular letters, improper solicitation of clients and the stirring up of claims has been going forward systematically of which plaintiffs' counsel and their associate counsel in New York are aware. If contrary to our urging the Court denies the relief requested by our motion of February 21, 1975, we ask, at a minimum, that the Berger firm and the Wien firm be ordered to take the action which to this time they have failed to take, and to seek correction of the circular letters by informing all recipients that (i) the statements relating to the Berger firm and the Wien firm were unauthorized and that (ii) those firms are not available to represent them.

The Record of Events

On July 31, 1974 Mr. Wolfe sent a letter to Mr. Sulzberger in which he enclosed an in-blank retainer agreement on the letterhead of the Berger firm. (Exxon Ex. A) In their testimony on March 5, 1975, Mr. Berger acknowledged that he was the author of this retainer agreement and Mr. Wolfe said that he had sent similar

in-blank retainer agreements to other unspecified persons. (Testimony of Mr. Berger and Mr. Wolfe)

The text of the retainer letter form was later the subject of lengthy negotiation between Mr. Felsten of the Wien firm and Mr. Berger, presumably in connection with the Wien firm entering the litigation as associate counsel. (Testimony of Mr. Felsten) Mr. Felsten referred to the in-blank retainer agreement (Exxon Ex. A) as "the one we used prior to our recent decision to suggest the alternative, separate lawsuit." (Exxon Ex. D) It appears that attorneys in the Wien firm, acting as associate counsel, were fully familiar with the form of retainer agreement drafted by the Berger firm in connection with this litigation and various changes which were made in the form of the agreement.

It was against this background that the Lippman form of letter was drafted in January 1975 and sent to at least three managing agents for cooperative apartments.

On January 10, 1975, Mr. Wolfe stated in Court

> "We are going to have a substantial number of additional plaintiffs . . ."

and referred specifically to "cooperatives". On the same day, Mr. Lippman of the Wien firm sent a letter to Mr.

Sulzberger, which to a substantial extent was thereafter incorporated verbatim into the Sulzberger-Rolfe circular letter to cooperatives of February 6, 1975. (Exxon Ex. C)

How Mr. Lippman's letter of January 10, 1975 was drafted and who participated is not a part of the record but it did become the form letter which was sent thereafter on at least two occasions: on January 13, 1975 to Mr. Grotto of Brown Harris Stevens (Testimony of Mr. Lippman), a managing agent for cooperatives, and on January 22, 1975, to Mr. Hamlin of Douglas Elliman, another managing agent for cooperatives. (Exxon Ex. E)

The text of the Lippman form of letter reflects a detailed knowledge of the fee arrangements developed after July 1974 and before what is apparently the most recent change (to suggest separate lawsuits rather than intervention). (Exxon Ex. B and E; see Exxon Ex. D; Testimony of Felsten). It also contains a specific representation that the Berger firm limits its practice to antitrust and securities litigation. (Exxon Ex. B and E)

In the case of Douglas Elliman, the language of the Lippman letter was again incorporated to a substantial extent verbatim into a circular letter sent in February 1975 to a large number of property owners. (Exxon Ex. F;

testimony of Lippman) One copy of the Douglas Elliman circular letter appears to have been sent to Frank Karelsen Sr. (Exxon Ex. G) On February 5, 1975, the day before the Sulzberger-Rolfe circular letter was distributed, Frank Karelsen III, a close personal friend of Mr. Lippman's (Testimony of Mr. Lippman), sent the copy of the Douglas Elliman circular letter to Albert B. Ashforth, Inc., another managing agent for cooperatives with a brief covering letter which stated "You will be hearing more on this shortly." (Exxon Ex. H)

It was in the course of this circularization of cooperatives in the first half of February based on Mr. Lippman's form letter, that Mr. Felsten wrote his letter to Mr. Berger, dated February 11, 1975 in which he stated:

> "Enclosed, for your information, is a copy of self-explanatory letter dated February 6, 1975 as distributed by our client, Sulzberger-Rolfe Inc. The retainer letter form distributed is the one we used prior to our recent decision to suggest the alternative, separate lawsuit. I doubt this will make for any difficulty. We now are waiting for returns on this and at least two other groups of possible litigants. We should have these results by February 21."
> (Exxon Ex. D)

We believe that the clear purport of Mr. Felsten's report to Mr. Berger is that he was "waiting for returns"

on the Sulzberger-Rolfe circular letter and that the reference to "at least two other groups of possible litigants" very likely included "returns" on the Douglas Elliman circular letter and possibly such secondary circulation as is reflected in the Karelsen correspondence. (Exxon Ex. G and H)

We submit that what has occurred, and what will continue unabated unless the Court intervenes is an improper solicitation of clients for plaintiffs' counsel and their associate counsel in New York which contains improper representations that plaintiffs' counsel insist were unauthorized.

We submit that on the record developed to this time (to the limit permitted by the Court), the Court should direct plaintiffs' counsel and their New York associates to correct the improper solicitation by informing all recipients of the circular letters that the representations as to their firms were unauthorized and that plaintiffs' counsel is not available to represent the recipients of the letters.

The Applicable Rules and Principles

We turn now to a statement of the rules by which this professional conduct must be judged.

The Judiciary Law of the State of New York is clear in its prohibition of the solicitation of legal business:

> It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services, or to make it a business to so solicit or procure such business, retainers or agreements.

New York Judiciary Law § 479. See cases under predecessor statute such as People v. Schneider, 20 App. Div. 2d 401 (1st Dep't 1964); People v. Meola, 193 App. Div. 487 (2d Dep't 1920); People ex rel. Moses v. Adams, 172 Misc. 143 (Sup. Ct. 1939).

In addition, the Lawyer's Code of Professional Responsibility (which is expressly stated in General Rule 5(f) of this Court to regulate the conduct of attorneys and which is applicable to all attorneys), declares explicitly that an attorney should not participate directly or indirectly in the encouragement of litigation or of his own employment. Canon 2 provides

Disciplinary Rule DR 2-103(C):

> A lawyer should not request a person or organization to recommend employment, as a private practitioner,

of himself, his partner, or associate, except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.

Disciplinary Rule DR 2-103(D):

A lawyer should not knowingly assist a person or organization that recommends . . . the use of his services or those of his partners or associates . . . .

Disciplinary Rule DR 2-103(E):

A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

DR 2-104 Suggestion of Need of Leagl Services.

A. A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

   1. A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

EC 2-3 Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit, secure personal publicity,

> or cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.
>
> EC 2-4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result. A lawyer who volunteers advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with the matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment) and regular clients.
>
> EC 2-8 Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties--relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment . . . .

Under these rules, systematic referrals are improper. Matter of Feldman, 17 App. Div. 2d 553 (1st Dep't 1963); Matter of Shufer, 12 App. Div. 2d 208 (1st Dep't 1961), motion for leave to appeal denied, 9 N.Y.2d 611 (1961). Likewise improper is a prior arrangement between an attorney and a layman by which the layman recommends clients to the attorney. People v. Schneider, 20 App. Div. 2d 408 (1st Dep't 1964); In re Kriendler, 228 App. Div. 492 (1st Dep't 1930); Matter of Schacht, 228 App. Div. 232 (1st Dep't 1930). And

where the number of referrals is large, an "inescapable circumstantial inference" is raised that the clients were obtained by the attorney through pre-arrangement. Matter of Kelly, 23 N.Y. 2d 368, 380 (1968); In re Breiterman, 22 App. Div. 2d 553 (1st Dep't 1965); Matter of Mahan, 228 App. Div. 241 (1st Dep't 1930).

In its opinion Number 8 (May 1913) the Committee on Professional Ethics of New York County Lawyers' Association roundly criticized the circulation by an attorney of a blank retainer letter: "This method of solicitation of employment by members of the Bar is unworthy, does not conform to ethical standards of our profession, and should be condemned."

In Formal Opinion 9 (April 29, 1926) the Committee on Professional Ethics of the American Bar Association ("ABA Committee") disapproved a circular letter from attorneys which merely advised potential claimants of the existence of the Special Claims Convention between the United States and Mexico and the forthcoming regulations for filing claims. The circular contained no appeal or suggestion of employment, but was a statement of facts received from official sources. The committee found the

circular improper: "The furnishing of such information by a lawyer to such persons, on his letterhead and over his signature, necessarily carries within the implication that the lawyer is familiar with the subject and would be glad to be employed in connection therewith."

In Formal Opinion 5 (July 7, 1924) the ABA Committee found it improper for an attorney to solicit employment from persons with whom he had no attorney-client relationship, even though the potential claimants might benefit financially from a test case being prosecuted by the attorney at the request of another client.

The New York State Bar Association Committee on Professional Ethics said in Opinion Number 338 (April 25, 1974):

> Under special circumstances described in EC 2-3 and EC 2-4, a lawyer may properly volunteer advice to a layman to seek legal services. Such advice would, however, be 'improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause litigation to be brought merely to harass or injure another'. EC 2-3 Nor should a lawyer 'contact a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation'. EC 2-3 and DR 2-103(A). N.Y. City 548 (1941).
>
> Thus a lawyer who properly volunteers advice to a layman that he should obtain counsel to take action may not, under DR 2-103 and DR 2-104(A) accept employment resulting from that advice,

> unless the situation falls within certain narrow exceptions set forth in DR 2-104(A) and EC 2-4, as where the lawyer's unsolicited advice is given to a 'close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.'*

In Opinion Number 426 (December 1, 1937) the Committee on Professional Ethics of the Association of the Bar of the City of New York was requested to rule upon a pamphlet circulated by a client. The pamphlet described the work done by the attorney, lauded his abilities, and included a photograph and pertinent business information. In addition, it recited the details of presently pending litigation, the importance of the litigation and noted that further information could be obtained by contacting the attorney. The Committee answered:

> In the opinion of the Committee, it is not professionally proper for an attorney, under the circumstances described, even if the photograph were omitted, to permit the exploitation of himself for the sake of his client's cause, if that be the purpose of such pamphlet, and much less for the advertisement of himself, especially where such circularization is general.

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* As to whether someone is in fact a client the ABA Committee has said, in Informal Decision Number 809 (January 22, 1965), that "the word 'client' should be interpreted to mean a person or corporation who regularly employed the firm of attorneys . . . ." Id. at 5.

See also Opinion Number 4 (March 1912) of the Committee on Professional Ethics of the New York County Lawyer's Association (it is improper practice for an attorney to procure clients through the systematic efforts of a client, at the instigation of the lawyer, by means of letters sent by the client to others in the same business urging employment of the attorney).

Conclusion

Applying these rules and principles to the facts developed on the record, we believe that the Court must conclude that actions set in motion, directly or indirectly, by the Berger firm and the Wien firm, and for which they have professional responsibility, are resulting in improper solicitation. The impropriety of this solicitation is based upon representations in the circular letter which these firms insist were unauthorized. In such circumstances, their duty is to avoid so much as even the appearance of improper conduct. It requires that they take immediate corrective action by informing all recipients of the circular letters that (i) the statements relating to the Berger firm and the Wien firm were unauthorized and that (ii) those

firms are not available to represent them.

Respectfully submitted,

SULLIVAN & CROMWELL
Attorney for Defendant
Exxon Corporation,
48 Wall Street,
New York, New York 10005
(212) 952-8100

Robert MacCrate,
Robert M. Osgood,
Kenneth M. Bialo

Of Counsel.

March 6, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

S. J. LEFRAK, et al.,

-against- 74-C-1700

ARABIAN AMERICAN OIL CO., et al.,

Defendants.

----------x

United States Courthouse
Brooklyn, New York

March 6, 1975
12:00 o'clock p.m.

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

SUMNER SUTHER
OFFICIAL COURT REPORTER

DAVID BERGER, ESQ.
Attorney for Plaintiff

BY: JEROME EDELMAN, ESQ.
Of Counsel

MESSRS. SULLIVAN & CROMWELL
Attorneys for Defendant Exxon

BY: ROBERT MC CRATE, ESQ.
ROBERT OSGOOD, ESQ.

MESSRS. CRAVATH, SWAINE & MOORE
Attorneys for Defendant Asiatic Petroleum

BY: W. FILLMORE WOOD, JR., ESQ.
Of Counsel

MESSRS. LORD, DAY & LORD
Attorneys for Standard Oil Company of California

BY: GORDON SPIVACK, ESQ.
Of Counsel

THE COURT: The Court advises counsel that a written memorandum order will be filed, but due to its length, it will not be available until March 7, 1975 be about 11:00 A.M. However, the determination of the Court in brief is the following:

The motion to disqualify plaintiff's counsel is denied. The stay here in force is vacated and the application for injunctive relief is denied.

The proceedings shall not be delayed by reason of any appeal of this order that defendant may seek for further relief in this matter. However, the memorandum and order will reflect that the fee agreement in question should not be further disseminated, and steps shall be taken to prevent further distribution to potential clients who do not request it.

That is the Court's memorandum for today. A full decision will be filed tomorrow.

MR. MC CRUM: Your Honor, the direction is with respect to the fee agreement?

THE COURT: Yes.

MR. MC CRUM: Is there any direction included with respect to correcting the --

THE COURT: The memorandum decision the Court

will file will encompass all of those situations. It will be a full decision and a lengthy one, and that's why it could not be available today. That will be ready for distribution tomorrow morning and will be filed with the Clerk. An order will likewise be filed.

(Time noted: 12:15 p.m.)

* * *

Proposed Order of Exxon Corporation, Submitted March 7, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al.,		
Plaintiffs,	:	Civil Action No. 74-C-1700 (M.A.C.)
-against-	:	
ARABIAN AMERICAN OIL COMPANY, et al.,	:	
Defendants.	:	
NEW YORK CITY HOUSING AUTHORITY,	:	
Plaintiff,	:	Civil Action No. 75-C-15 (M.A.C.)
-against-	:	
ARABIAN AMERICAN OIL COMPANY, et al.,	:	
Defendants.	:	
ROCHDALE VILLAGE, INC.,	:	
Plaintiff,	:	Civil Action No. 75-C-135 (M.A.C.)
-against-	:	
ARABIAN AMERICAN OIL COMPANY, et al.,	:	
Defendants.	:	ORDER

IT IS HEREBY ORDERED that the motion of defendant Exxon Corporation, dated February 21, 1975 to prohibit solicitation and to disqualify plaintiffs' counsel is denied, except to the extent that

IT IS FURTHER ORDERED that the firm of David Berger, P.A. and the firm of Wien, Lane & Malkin shall send by

registered mail, on or before March , 1975, to each person and entity to whom the circular letter from Sulzberger-Rolfe, Inc. dated February 6, 1975, and the circular letter from Douglas Elliman & Co., Inc. (undated, signed by Irwin Gumley) were communicated, a notice informing such persons and entities that

(i) the statements contained therein relating to the Berger firm and the Wien firm were unauthorized, and

(ii) the Berger firm and the Wien firm are not available to represent them with respect to any claims referred to in such circular letters.

_____

U.S.D.J.

Dated: Brooklyn, New York
March , 1975

Order of Costantino, J., Dated March 11, 1975, Denying the Motions to Prohibit Solicitation and to Disqualify Plaintiffs' Counsel and Declining to Enter the Proposed Order to Exxon Corporation

JA 357

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al.,

Plaintiffs,

v.

74-C-1700

ARABIAN AMERICAN OIL COMPANY, et al.,

Defendants.

NEW YORK CITY HOUSING AUTHORITY,

Plaintiff,

v.

75-C-15

ARABIAN AMERICAN OIL COMPANY, et al.,

Defendants.

ROCHDALE VILLAGE, INC.,

Plaintiff,

v.

75-C-135

ARABIAN AMERICAN OIL COMPANY, et al.,

MAR 11 1975

Defendants.

COSTANTINO, D.J.

This is an application brought on by an Order to Show Cause for an order enjoining (a) plaintiffs' counsel, David Berger, P.A., and all associated counsel, (b) plaintiffs and (c) all other persons acting in concert with them from stirring up claims against defendants and for an order disqualifying David Berger, P.A., from further prosecuting claims against defendants. The Order to Show Cause included a stay restricting the Berger firm's contact with potential plaintiffs.

In essence, defendants contend that they are entitled to the relief requested because plaintiffs' attorneys, David Berger, P.A. and Wien, Lane and Malkin, improperly solicited clients in violation of a number of provisions of the American Bar Association Code of Professional Responsibility and section 479 of the New York Judiciary Law. This is a grave charge since it is a long-standing principle that lawyers are not to stir up litigation.

Because of the seriousness of defendants' charge, the relevant facts will be set forth in some detail. These findings of fact are based on affidavits submitted to the

court and a hearing held March 5, 1975.

One of the central figures in the controversy responsible for defendants' motion is Mr. Edward Sulzberger, President of Sulzberger-Rolfe, Inc., a real estate brokerage firm which manages residential and commercial buildings. Mr. Sulzberger first learned of the initial Lefrak action against the oil companies near the end of July, 1974 from Richard Lefrak, with whom he was engaged as a joint venturer in a major real estate project in New York. The initial Lefrak action, which was subsequently dismissed by consent, and the instant actions allege an illegal conspiracy by defendants resulting inter alia in artificially high heating oil prices.

When Sulzberger expressed interest in finding out more about the litigation, Mr. Lefrak (who is associate counsel in at least one of the instant actions) said he would have David Berger, senior member of David Berger, P.A., call Sulzberger. Shortly thereafter, Stanley Wolfe, a member of the Berger firm, telephoned Sulzberger. Wolfe mentioned to Sulzberger that Lefrak had informed him of Sulzberger's interest in learning more about the litigation. Sulzberger sought information during the

telephone conversation concerning the nature of the litigation, fee arrangements, and other related information. In response to Sulzberger's request for further explanation and confirmation in writing, Wolfe sent him a letter dated July 31, 1974, describing the litigation. In compliance with Sulzberger's request, a fee agreement form was enclosed.

In January, 1975, Sulzberger read about the New York City Housing Authority action in the newspaper. He subsequently asked his counsel, William Lippman, a member of the firm of Wien, Lane & Malkin (another associate counsel of the Berger firm) for further details about the litigation and whether the pending suits were class actions. Informed that they were not class actions, Sulzberger requested that Lippman write him a letter summarizing the status of the litigation and the retainer arrangement which might be made with the Berger firm if Sulzberger's principals wanted to commence litigation. In response, Lippman sent a letter to Sulzberger dated January 10, 1975 which conformed with his client's request. Lippman has acted as counsel to Sulzberger-Rolfe Inc. and Mr. Sulzberger since 1969.

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After receiving Lippman's letter, Sulzberger informed Lippman that Sulzberger felt it was his duty to advise the property owners for whom his company acted as managing agent of the pending litigation and the need to consider commencing their own actions. Copies of a form letter dated February 6, 1975 containing some of the language of Lippman's letter subsequently were sent by Sulzberger-Rolfe, Inc. to the boards of directors of all the cooperative apartment houses managed by the company. Enclosed with the letter was a copy of the retainer agreement form sent earlier by Mr. Wolfe to Sulzberger. No members of the Berger and Wien firms discussed with anyone from Sulzberger-Rolfe, Inc. the letter dated February 6 before it was sent. Although the letter mentioned the names of the law firms, use of the firm names was not authorized by either firm. Enclosure of the retainer form was also not authorized by either firm. No members of the two law firms saw copies of the letters until after they were sent.

Wien, Lane and Malkin is counsel to Harry Helmsley, who owns Brown Harris Stevens, Inc. At Helmsley's request, Lippman wrote a letter dated January 13, 1975 to the

president of Brown Harris Stevens, Inc. advising the president of the litigation.

In January, 1975, John F. Hamlin, the president of Douglas L. Elliman & Co., Inc., telephoned Lippman to inquire about the Lefrak action. Douglas L. Elliman & Co., Inc. is, like Rolfe-Sulzberger, Inc. and Brown Harris Stevens, Inc., engaged in real estate management. Lippman had been special counsel to Elliman from time to time since 1960. During the telephone conversation, Lippman furnished to Hamlin the information he had earlier furnished to Sulzberger. At Hamlin's request, Lippman wrote him a letter dated January 22, 1975 summarizing the litigation.

After receiving Mr. Lippman's letter, Hamlin felt an obligation to ask the boards of all cooperatives managed by the company whether they wished to join the litigation. As a consequence, he directed that a form letter be written to all boards describing the litigation and containing language drawn from Lippman's letter. Although the form letter mentioned the Wien and Berger firms, no members of the firms authorized the use of the firm names. As was the case with the Sulzberger-Rolfe, Inc.

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letter, until after the letter was mailed no member of the Wien firm discussed it, knew its contents, or saw it. The Berger firm first learned of the Elliman letter when the letter was served with defendant Exxon's papers.

Albert B. Ashforth, Inc., a real estate management firm, was apparently advised of the litigation as a result of a follow-up to the Elliman letter. There is no evidence that either the Wien or Berger firms were directly responsible for contacting Albert B. Ashforth, Inc.

The court will now evaluate the ethical questions raised by defendants. The record is not clear whether Richard Lefrak, a member of the bar, initiated discussion of the antitrust action with Sulzberger. Even if he did, this would not be improper since the Lefrak lawsuit dealt with an issue - artificially high prices of heating oil - of importance to Lefrak's and Sulzberger's joint real estate venture. The canons prohibiting solicitation are not meant to bar this type of discussion between joint venturers where the joint venture is not just a cover for directing legal business to an attorney:

> . . . no canon. . . condemns the recommendation of lawyers to

FPI—S3—9-17-72—30M—0153

> persons in a personal, social or professional relationship, pre-existing the making of the recommendation and reasonably concerning matters referable to the relationship.

People v. Schneider, 20 App. Div. 2d 408, 411, 247 N.Y.S. 2d 623, 626 (1964).

All communications by members of the Wien and Berger firms to potential plaintiffs appear to have been made in compliance with instructions given by clients or in response to specific inquiries from clients or others. The distribution of the law firm retainer forms by Sulzberger-Rolfe was regrettable since one not privy to the intricate chain of events outlined above could misinterpret the distribution as involving improper solicitation by a law firm. It must, however, be emphatically stated that this distribution can hardly be said to involve a breach of ethics on the part of the highly respected Berger and Wien firms since neither firm knew or had reason to know of the distribution of the retainer forms by Sulzberger-Rolfe. The Berger firm has represented to the court that no plaintiffs have joined the case as a consequence of the Sulzberger-Rolfe and Elliman letters.

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As to defendant's charge of violation of specific provisions of the Code of Professional Responsibility and the New York Judiciary Law, the following conclusions are reached: Since there has been no showing that a member of the Berger of Wien firm improperly gave advice or influenced another, there is no violation of Ethical Considerations 2-3, 2-4, or 2-8 of the Code. In the absence of evidence that a member of the law firms requested a person or organization to recommend employment of the firms, there is no violation of Disciplinary Rule 2-103 (C). Nor was there improper assistance of the type proscribed by Disciplinary Rule 2-103 (D). There was no unsolicited advice of the type prohibited by Disciplinary Rule 2-104. Moreover, there is no evidence of improper solicitation in violation of New York Judiciary Law section 479. In short, plaintiffs' attorneys violated neither the spirit nor letter of the Code of Professional Responsibility and section 479 of the Judiciary Law.

The authorities cited by defendant Exxon are inapplicable to the case at bar; for example, Opinion Number 8 (May, 1913) of the Committee on Professional Ethics of the New York County Lawyers' Association appears

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to deal with the case of a lawyer sending out a letter to request a retainer from a potential client who had not first contacted him. As noted above, the Berger firm sent out its fee agreement form only in response to Sulzberger's request for information. In addition, the retainer forms sent by Sulzberger-Rolfe, Inc. to potential plaintiffs were transmitted without the knowledge of the Berger or Wien firms. In Matter of Shufer, 12 App. Div. 2d 208 (1st Dep't 1961), mo. for leave to appeal denied, 9 N.Y. 2d 611 (1961), relied on by defendants, the attorney entered into an arrangement in which insurance brokers agreed to solicit cases for him in return for valuable consideration. Shufer, like the other cases cited by defendant Exxon, is clearly distinguishable on its facts from the case at bar.

In view of the foregoing, defendants' motion is in all respects denied. The stay which the court imposed on February 21, 1975 is vacated. Plaintiffs' counsel should advise Sulzberger-Rolfe, Inc. that it is not to distribute copies of the law firm retainer forms to any potential plaintiff. Naturally, only individuals or companies which ask plaintiffs' attorneys for information about the litigation may be provided with a retainer form.

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Prior to issuance of this opinion, defendant Exxon applied for certain alternative relief in the event that the relief originally requested is denied. Specifically Exxon asked that the Berger and Wien firms be required to inform the recipients of the Sulzberger-Rolfe and Elliman letters that (a) the statements relating to the Berger and Wien firms were unauthorized and (b) those law firms are not available to represent them. This application is denied since neither proposed remedy is warranted.

So Ordered.

U. S. D. J.

FPI—SS—3-17-72—3000—9153

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAMUEL J. LEFRAK, et al.,

Plaintiffs,

-against-

ARABIAN AMERICAN OIL COMPANY, et al.,

Defendants.

Civil Action No. 74-C-1700 (M.A.C.)

NEW YORK CITY HOUSING AUTHORITY,

Plaintiff,

-against-

ARABIAN AMERICAN OIL COMPANY, et al.,

Defendants.

Civil Action No. 75-C-15 (M.A.C.)

ROCHDALE VILLAGE, INC.,

Plaintiff,

-against-

ARABIAN AMERICAN OIL COMPANY, et al.,

Defendants.

Civil Action No. 75-C-135 (M.A.C.)

JOINT NOTICE OF APPEAL

Notice is hereby given that Exxon Corporation, Gulf Oil Corporation, Texaco Inc. and Arabian American Oil Company, defendants in the above-entitled actions, hereby appeal to the United States Court of Appeals for the Second Circuit from the order entered in each of the above-entitled actions on March 11, 1975, denying in all respects defendants' motion for an order disqualifying David Berger, P.C., counsel for plaintiffs in the above-entitled actions, from further prosecuting claims against said defendants and for an order

enjoining David Berger, P.A. and all associated counsel, plaintiffs and all other persons acting in concert with them from stirring up claims against said defendants and denying the further application for an order requiring such counsel to take certain corrective actions.

Dated: April 9, 1975

SULLIVAN & CROMWELL

By _____
Robert Macrate, Esq.
Attorneys for Defendant
Exxon Corporation
48 Wall Street,
New York, New York 10005
(212) 952-8100

KISSAM & HALPIN
Anthony S. Genovese, Esq.
Attorneys for Defendant
Gulf Oil Corporation
120 Broadway,
New York, New York 10005
(212) 962-2000

KAYE, SCHOLER, FIERMAN, HAYS
& HANDLER,
Milton J. Schubin, Esq.
425 Park Avenue,
New York, New York 10022
(212) 759-8400

CHARLES F. KAZLAUSKAS, JR., ESQ.
135 East 42nd Street,
New York, New York 10017

Attorneys for Defendant
Texaco Inc.

WHITE & CASE
Thomas J. O'Sullivan, Esq.
Attorneys for Defendant
Arabian-American Oil Company
14 Wall Street
New York, New York 10005
(212) RE 2-1040

TO: The Honorable Lewis Orgel,
Clerk of the Court,
United States District Court,
Eastern District of New York,
225 Cadman Plaza East,
Brooklyn, New York 11201

FILED BY _____
DATE 5-13-75

Service of One (1) copy of the within Appendix is hereby admitted this 9th day of June, 1975.

Harriet Frumes

attorney for Plaintiffs-appellees
Lefrak & Rochdale.

attorney for Plaintiff-appellee
N.Y. City Housing

attorneys for Plaintiffs-appellees

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